



ActifHR

Where people matter...

February 2017 Update

Welcome to this month's update - where we discuss the latest legislation and guidance.

In this edition we report on:

- Apprenticeship levy – are businesses ready?
 - Does long-term stress amount to a disability?
 - Failure to act – is this gross misconduct?
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Apprenticeship levy – are businesses ready?

Recent surveys have shown that small and medium-sized enterprises (SMEs) may be less well prepared for the impact of the apprenticeship levy, while large employers are more likely to be putting plans in place to use young apprentices to cover the cost of the apprenticeship levy.

Just over half (53%) of medium-sized employers and a quarter (25%) of small employers say that the levy will result in either increasing their use of young apprentices, to gain the value from the levy, due to the additional costs that will be incurred by taking on apprentices.

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Employers: it is therefore possible that some SMEs could find that they need to increase their recruitment of young apprentices in future to recover these costs, once the full impact of the apprenticeship levy becomes apparent.

Contact us: we can assist with advising on apprenticeships and apprenticeship contracts.

Does long-term stress amount to a disability?

Not in this situation, found the Employment Appeals Tribunal (EAT) in the case of *Herry v Dudley MBC*.

The employee suffered from dyslexia and stress. The EAT considered the distinction between stress and mental illness. Nursing grievances or a refusal to compromise are not of themselves mental impairments." The employee was unable to establish a mental impairment or to show how stress had a substantial impact on normal day to day activities.

The EAT upheld the decision of the Employment Tribunal and found that a long period off work does not mean that the employee suffers from a mental impairment. There can be situations where a reaction to circumstances becomes entrenched without amounting to a mental impairment. An employee's stress may be a result of unhappiness about what they think of as unfair treatment, which would not amount to a disability.

To be a disability an employee would need to show how the stress affects their ability to carry out normal day to day activities.

Although this case contains gives helpful guidance, be careful when reaching the conclusion whether an employee suffering from stress is disabled. The margins are fine and in the end it is only the Tribunal that can decide if it falls into the definition of disability under the Equality Act. Each case will depend on its specific facts.

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Employers: should information from occupational health and other medical practitioners, to help reach an informed decision about whether an employee meets the definition of disability under the Equality Act.

Contact us: we can help with practical advice on managing sickness at work.

Failure to act – can this amount to gross misconduct?

The Court of Appeal has just found in the case of *Adesokan v Sainsbury's Supermarkets Ltd*, inaction at a senior level justified dismissal.

A Regional Manager was aware that an HR Manager had sent an email which attempted to change an important management consultation exercise. Despite being aware of this email the Regional Manager did nothing to get it withdrawn or to remedy the situation. It was decided that his inaction demonstrated gross negligence which was "tantamount to Gross Misconduct" and he was therefore dismissed.

Even though the inaction of the Claimant was not deliberate, his negligence and failure to act was so serious that it resulted in a "loss of trust and confidence" sufficient to justify dismissal.

Employers: It is unusual that a failure to act amounted to gross misconduct, however, on the facts of this case the senior position of the Claimant had in the Company justified the dismissal.

Contact us: we can assist with advising on the disciplinary procedure

Caroline Robertson, CEO

Caroline has a wealth of experience supporting business clients with practical hands on HR advice.

Caroline's pragmatic approach helps businesses of all sizes deal with complex HR situations.

She qualified as a Solicitor in 1999 and is able to assist Businesses on all aspects of employment law and HR.



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