



ActifHR

Where people matter..

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## June 2024 Update

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

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In this Edition we report on:

- Redundancy consultation
- Supporting neurodiversity in the workplace
- Developments in occupational health

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### Redundancy consultation

Employers should consult on proposed pool for redundancy – especially when picking a pool of one.

In the recent case of *Valimulla v Al-Khair Foundation*, the Claimant worked as a liaison officer covering the North-West of England. There were other employees who carried out a similar role in other locations. Work for liaison officers decreased across the country during Covid.

The company placed the Claimant at risk of redundancy in a pool of one. The other liaison officers were not put at risk. There was no consultation about the appropriateness of the pool. The Claimant was dismissed and claimed unfair dismissal.

The Employment Tribunal found that the Claimant had been fairly dismissed for redundancy. It accepted the company's submission that the Claimant was in a self-selecting pool of one. It found that the process was not so flawed as to be unfair. However, the Claimant appealed.

Tel: 01327 317537

M: 07947567661

E: [caroline.robertson@actifhr.co.uk](mailto:caroline.robertson@actifhr.co.uk)/[info@actifhr.co.uk](mailto:info@actifhr.co.uk)

ActifHR Ltd, Innovation Centre, Silverstone Park. NN12 8GX

The Employment Appeal Tribunal, allowing the appeal, held that consultation on redundancy had to take place at a time when it could make a difference.

The company had not consulted with the Claimant about the pool for selection.

The tribunal had also failed to consider whether choosing a pool of one was a reasonable approach in this particular case.

Therefore, the EAT substituted a finding of unfair dismissal (on procedural grounds) because of the failure to consult about pooling.

**Employer:** be aware if you are choosing the pool for selection to consider if you have to consult the employee about this.

**Contact us:** we can assist with redundancy consultations.

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## Supporting neurodiversity in the workplace

Neurodiversity refers to neurological variations that people experience. These commonly include:

- autism;
- attention deficit hyperactivity disorder (ADHD);
- dyslexia (problems with information processing);
- dyspraxia (which affects movement, coordination and spatial awareness);
- dyscalculia (difficulty with number concepts); and
- dysgraphia (writing skills)

Examples of successful neurodiverse people are Bill Gates and actress Emma Watson.

Neurodiversity is not a synonym for disability.

Not all neurodiverse employees will be disabled, but many are.

To meet the legal definition of disabled under the Equality Act 2010, an employee does not need to have a diagnosis. Many neurodiverse people may not, but still experience substantial and long-term effects on their day-to-day activities.

Tel: 01327 317537

M: 07947567661

E: [caroline.robertson@actifhr.co.uk](mailto:caroline.robertson@actifhr.co.uk)/[info@actifhr.co.uk](mailto:info@actifhr.co.uk)

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## **Supporting neurodiverse employees**

The adjustments needed will differ for everyone.

Even with a reasonable adjustment, neurodiverse people may find they do not experience equity. For example, if they have problems with time management and use scheduling applications.

There are many ways to support neurodiverse workers.

If the employee has sensory issues, employers may need to ask them about lighting, sound or the fabric of a uniform. Traditional interview or recruitment processes may not suit all neurodiverse candidates

## **Neurodiversity and discrimination**

Many people with neurodiversity choose not to disclose their condition and employers are not liable if they were unaware of it. If a business is aware, then there is a requirement to provide reasonable adjustments, otherwise they may face claims for disability discrimination.

## **Key points for employers**

- Foster a culture that encourages disabled employees (and candidates) to disclose their disability or concerns to allow for reasonable adjustments.
- Seek the advice of occupational health on how best they can support an employee.
- For a candidate, a pragmatic and open approach is required.

**Employers:** look at the best way to support and use neurodivergent employees.

**Contact us:** we can assist with supporting businesses with employees.

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## **Developments in occupational health provision**

What are the implications for employers of the proposed changes to the OH regime?

In 2022-23 more than 1.8 million workers reported work-related illness, with nearly 50 per cent due to work-related stress, depression or anxiety. Government statistics show that only 28 per cent of employers provide occupational health (OH) services to employees.

After the 'Working Better' consultation in November 2023, the government has launched an OH taskforce to consult and set minimum levels of OH required to reduce workplace illness and job losses.

Tel: 01327 317537

M: 07947567661

E: [caroline.robertson@actifhr.co.uk](mailto:caroline.robertson@actifhr.co.uk)/[info@actifhr.co.uk](mailto:info@actifhr.co.uk)

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The key proposals aim to tackle workplace sickness to keep people in work and include:

- introducing a voluntary minimum framework for the provision of OH services;
- exploring options for a group purchasing framework for SMEs; and
- developing a long-term OH workplace to build a multidisciplinary workforce.

SMEs are likely to benefit from the new framework because of the increased access to OH services and available funding. The voluntary and free OH framework for employers is expected to be published in summer 2024.

**Employers:** if employees are on long-term sick make sure you engage with them at an early stage.

**Contact us:** We can assist with long-term sickness.



Caroline has a wealth of experience supporting business clients with practical hands on HR and Employment Law advice. Caroline's pragmatic approach helps businesses of all sizes deal with complex HR situations. She qualified as a Solicitor in 1999 and now acts as a specialist Human Resource / employment Law Consultant to business.

**Caroline Robertson, Director**

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Tel: 01327 317537

M: 07947567661

E: [caroline.robertson@actifhr.co.uk](mailto:caroline.robertson@actifhr.co.uk)/[info@actifhr.co.uk](mailto:info@actifhr.co.uk)

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