



Supreme Court clarifies Reasonable accommodation

Supreme Court case of *Nano Nagle School v Daly*¹, decided on the extent of the obligation on employers to provide an employee with a disability with reasonable accommodation under the Employment Equality Acts.

Background

The employee, was employed as a Special Needs Assistant (the “SNA”) in the Respondent School, (the “School”). In July 2010, the SNA sustained very serious injuries in an accident which rendered her paraplegic and confined to a wheelchair. She undertook an extensive course of rehabilitation and sought to return to work at the beginning of 2011. The School obtained expert advice, including from occupational health specialists and an occupational therapist, and organised a risk assessment regarding the duties attached to the position and the SNA’s ability to undertake those duties. A jobs demand analysis carried out by the occupational therapist concluded that the SNA was fit to do all, or part of, nine of the sixteen duties identified. It further recommended that the SNA could act as a “floating” SNA undertaking work with children in certain categories and performing SNA duties with children who needed verbal or physical prompts. The report identified safety as a major concern and it recommended against the SNA working with children who could act-out physically. The occupational health physician, on review of the risk assessment and report and following discussions with the Principal of the school, concluded that the SNA was not medically fit for the position of SNA. The School ultimately informed the SNA by letter in December 2011 that it was declining her request to return to work on the basis that she was medically unfit for the position of an SNA.

Legal proceedings

The SNA challenged the decision of the School, claiming that it had failed in its obligation to provide reasonable accommodation to enable her to return to work, contrary to section 16 of the Employment Equality Acts 1998-2011 (the “Acts”). The case commenced before the Equality Tribunal and, through a series of appeals, ultimately came before the Supreme Court for its decision on the extent of an employer’s obligation to accommodate persons with disabilities in the workplace and ancillary issues arising from the Labour Court’s determination. A particular matter for consideration by the Supreme Court was whether the employer’s obligation to provide reasonable accommodation by way of redistribution of tasks was limited to the non-essential tasks or duties of the position.

Supreme Court decision

The Supreme Court considered the aim of the Acts, ie to achieve equality in the workforce and the purpose of section 16, is that a person with a disability is to be seen as fully competent to undertake any duties if s/he would be so competent on reasonable accommodation being provided. The Supreme Court confirmed the primary duty of an employer is to take appropriate measures to enable a person with disabilities access, participate and advance in employment, unless those measures would impose a disproportionate burden.

In overturning the Court of Appeal's decision, the Supreme Court rejected any proposition that section 16 of the Acts requires an employer to take measures to provide an employee with a disability with reasonable accommodation so as to enable them continue in employment, irrespective of whether the employee is actually capable of doing the job. It observed that such an interpretation would almost inevitably place a "disproportionate burden" on an employer and furthermore that to interpret section 16 so as to require creation of a different job to facilitate an employee would be to disregard section 16(1) of the Acts which refers to whether an employee, with reasonable accommodation and appropriate measures, is fully capable of undertaking the duties attached to the position.

The Court held that to create a distinction between the duties and tasks of a position and to confine reasonable accommodation to the distribution or removal of non-essential tasks of the position would pose real problems as to how the distinction would be made and who would make it. Furthermore the Court held that such an interpretation would introduce, without any basis, a new test into the Acts and would also defeat the purpose of the Acts which is to achieve equality. It held that the assessment of whether reasonable accommodation has been provided in line with section 16 of the Acts is one of reasonableness and proportionality having regard to the employment context.

The Supreme Court in its decision affirmed that the obligation to provide reasonable accommodation to persons with a disability is a mandatory one and is fundamental to the overall interpretation of section 16 of the Acts. It confirmed, however, that if, on reasonable accommodation, an employee is unable to fully undertake the duties attached to the position, there can be no finding of discrimination.

The Supreme Court remitted the appeal to the Labour Court as the legal forum charged with statutory responsibility for assessing the evidence and applying the law to the facts, to consider specific unresolved issues, namely the matter of the School's consultation with the National Council for Special Education ("NCSE") regarding public funding or other assistance and the entirety of the occupational therapist's evidence including the suitability of the SNA for any role of floating SNA within the School and its legal consequences. The Supreme Court also confirmed that as a matter of fair procedures parties are entitled to the reasons for the level of any award of compensation by a relevant body.

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Takeaways

Competence to undertake the duties attached to the position is contingent upon reasonable accommodation and appropriate measures being put in place. Employers, particularly those in the public sector should therefore identify and assess measures which could be taken to reasonably accommodate an employee in their position, including exploring the possibility of public funding or assistance.

Employers should be aware that reasonable accommodation may involve a removal and redistribution of certain work tasks and duties, including essential tasks and duties of the position, where it is not a disproportionate burden. The matter of a disproportionate burden must be considered by looking at the employment context and what is required to accommodate a person in the position.

An employer must, in discharging its obligation to provide reasonable accommodation, give full and comprehensive consideration to any appropriate measures and it is advisable for the employer to consult with the employee concerned at relevant stages in the process. An employer should also maintain records of its actions and considerations in and around the reasonable accommodation process, including of its enquires with for example the Department of Education and Skills and other bodies about the possibility of obtaining public funding or other assistance.

We have extensive experience advising education bodies on equality and disability law matters, including reasonable accommodations in the workplace, and defending equality claims before the WRC and Courts.

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