

Resource

# Disability Discrimination Case Study – The Equality Act 2010

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Taken from: NRAS magazine, Autumn 2012

The following is a real case which Adish dealt with...

Joe suffers from left hip early osteoarthritis with femoroacetabular impingement. He believes that this condition amounts to a disability within the meaning of the Equality Act 2010.

Joe is currently employed as a Personal Trainer at “All About Health” gymnasium (his “Employer”) and has worked with them for the past 10 years. Joe was diagnosed with hip early osteoarthritis with femoroacetabular impingement 3 years ago. He feels that he has been treated less favourably by his Employer because of his disability, contrary to the Equality Act 2010.

Joe has, on several occasions, made his Employer aware that he is suffering from a disability for which he requires reasonable adjustments to his working practices. Joe has requested the following adjustments:

- 1.?? ?regular breaks from his shifts so that he can rest to ease the pain in his hip;
- 2.?? ?a reduction in his hours but not so much of a reduction that would prevent him from earning a living. He wants to work 27 hours per week;
- 3.?? ?an adjustment to the shift pattern for Personal Trainers to allow him to work Mondays and Tuesday which are his busiest days (so that he can continue to look after his key clients); and
- 4.?? ?that his Employer waives its unreasonable request that Joe works every weekend (the quietest times) as part of his working hours as Joe wants to be treated in the same way as his non-disabled colleagues who only have to work one weekend per month.

### Employee Booklets

Whilst Joe’s Employer has been on notice of his disability for over 3 years; it has persistently failed to make any adjustments to accommodate his disability. Joe’s manager regularly picks on him for demonstrating his hip pain in the way that he sometimes walks around the gym. His manager’s view is that Joe’s physical impairment does not create a positive image for the gymnasium and its Personal Trainers.

The subjecting of Joe to disability discrimination has meant that Joe has been prevented from working the reduced hours he requested and this has had a detrimental effect on his current health which has exacerbated the effects of his disability. Two months ago, Joe raised a formal grievance as he felt that he had no alternative but to do so in circumstances where all of his previous concerns raised verbally had been ignored. Joe’s Employer did not uphold his grievance and denied all liability for discrimination. Joe’s Employer did, however, agree to reduce his hours to 20 hours per week (with no flexibility or adjustment to enable him to work in excess of that should the need arise), requesting that he works at the quietest times every weekend and preventing him from working at the busiest times on Mondays and Tuesdays. He has also been allowed to take a 10-minute break when he feels in pain on the condition that he authorises the break with his manager so that his manager is aware of his whereabouts.

Joe’s Employer wishes to vary Joe’s terms and conditions of employment to reflect his new working hours (20 hours per week) and days of work to include working every weekend. Joe was told that he would face “proceedings” if he does not accept the proposed varied terms.

Joe considers that his Employer has failed to give any good reason for not agreeing to make the adjustments he requested and that the proposed adjustments that it is willing to make are unreasonable in the circumstances. Joe is aware that new staff are being recruited or being asked to cover Mondays and Tuesdays (his Employer has the maximum number of Personal Trainers already because it is allowing employees without a disability to work on a Monday and Tuesday instead of

him).

Joe went to see a solicitor for legal advice to see if he had any potential employment claims against his Employer. He was advised that the Equality Act 2010 requires employers to make reasonable adjustments for employees who have a disability. Also, that employees with a disability should not be treated less favourably because of a disability. In Joe's case, his employer did not provide any business reasons as to why it could not allow Joe to work 27 hours per week and on a Monday and/or Tuesday. Joe's Employer had not sought a medical opinion from an Occupational Health Therapist about his disability and what recommended adjustments could be made. In all the circumstances, therefore, Joe's Employer had failed to make reasonable adjustments. In addition to this, Joe's Employer subjected him to less favourable treatment by insisting he works at the quietest times every weekend (when his colleagues who did not suffer from a disability did not have to work every weekend) and by insisting that he seeks his manager's approval before taking breaks, in circumstances when it knew Joe had been bullied by him and that it would not always be possible to obtain such authority.

In addition to a claim for disability discrimination, Joe could also claim victimisation under the Equality Act 2010 because he was subjected to further less favourable treatment because he made a complaint (by raising his grievance) about disability discrimination, as his Employer threatened that he would face 'proceedings' if he does not accept the proposed variation to his terms and conditions of employment.

Joe was advised that if he were to pursue a claim in the Employment Tribunal for disability discrimination, he would be entitled to compensation for his injury to feelings, his future loss of income (if he were to resign and leave the gymnasium) and possibly the personal injury he had suffered due to his condition becoming worse as a result of his Employer's failure to accommodate his disability. It was also explained to Joe that the Employment Tribunal would make a recommendation about reasonable adjustments for his continued employment (if he did not leave).

At the interview with his solicitor, Joe was concerned about the costs involved in pursuing an Employment Tribunal claim. However, when his solicitor discussed the matter with him, it became clear that he had Legal Expenses Insurance which would fund legal assistance. Joe was very surprised he had not realised he had such cover in his Home and Contents Policy. Joe's solicitor assisted him to apply to his insurers for funding and then issued an Employment Tribunal claim on his behalf.

## Employer Law

The Equality Act 2010 is the law which bans unfair treatment and helps achieve equal opportunities in the workplace and in wider society.

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