



This week in Employment Law

New guidance on reasonable adjustments for mental health

Acas has released new guidance on reasonable adjustments for mental health in the workplace, to help employees stay in work whilst recovering from or managing a mental health condition.

- Acas recommend following this guidance even where employees are not disabled under the Equality Act 2010 as “...simple changes to a person’s working arrangements or responsibilities could be enough to help them stay in work and work well”.
- Employers have a duty under the Equality Act to make reasonable adjustments at work to remove or reduce any disadvantages employees face as a result of a disability. Mental health can be a disability under the Equality Act, where it has a substantial and long-term adverse effect on the ability to perform day to day tasks.
- The Acas guidance gives examples of reasonable adjustments, depending on the employee’s needs and the size and resources of the organisation. This could include changes to their physical working environment and/or working arrangements, finding a different way to do something, adapting the way policies are applied and/or providing equipment, services or support.
- Acas also offers guidance to employers in managing employees with reasonable adjustments for mental health, in recognition of the fact many line managers may not feel comfortable addressing this.
- Seeking external support should also be encouraged, where appropriate, such as from an employee assistance programme, occupational health and charities that focus on mental health issues.

Tips bill expected to be granted Royal Assent

The Employment (Allocation of Tips) Bill is expected to gain Royal Assent on Tuesday 2 May 2023, after successfully passing through the House of Lords. The Bill will make it unlawful for employers to withhold tips and service charges from workers. However, it is not expected to come into force until the associated Code of Practice has been consulted on, and approved by both Houses of Parliament, which will take around a year.

Did you know?

Employers, and in particular those in hospitality, will need to review their tipping policies and practices once the new Code of Practice is released, and communicate changes to workers.

Sickness absence days at highest since 2004

The percentage of working hours lost to sickness absence is at its highest since 2004, rising to 2.6% in 2022, according to figures from the Office for National Statistics (ONS). This equates to 185.6 million days lost to sickness in 2022, an increase of 35.8 million days from the previous year. For those with long-term health conditions, the ONS found that the sickness absence rate was the highest it has been since 2008, at 4.9%.

Did you know?

These findings highlight the need for employers to effectively support their employees’ health and wellbeing, and put measures in place to ensure absences don’t continue to harm productivity.

Sham resignation led to unfair dismissal

A sales manager agreed to “pretend to resign” and be reinstated after a month, when he was told he would otherwise be dismissed because he was close to 2 years’ service and the employer did not want him to acquire employment rights. Following his dismissal the next year, the employment tribunal concluded that the original “resignation” was a sham, so he had the necessary 2 years’ service to proceed with his unfair dismissal claim.

Did you know?

This case demonstrates that continuity of service cannot be broken by a sham resignation; it must be a genuine and clean break for it to bring service to an end.