



## DISABILITY DISCRIMINATION GRIEVANCE INCLUDING WORK RELATED STRESS

Brian Butler, Health & Safety and Employment Adviser for GCMA, writes about a Helpline query regarding a grievance including disability discrimination while on sick leave suffering from work related stress

### *Helpline Question*

*Q: We have an employee who is absent from work on sick leave. The doctor has given her a sick note indicating that the employee is suffering work related stress. In the list of the employee's grievances she has included disability discrimination. How should the club deal with this claim?*

**A:** There are different kinds of disability discrimination but the first step is to consider whether the employee's condition meets the definition of disability. There are two limbs to the definition. Firstly, the employee's condition has to last or is likely to last for a year or more. Secondly, the condition has to have a substantial effect on her day to day activities. The guidance to the Equality Act 2010 list the kind of activities that might be involved:

- walking or driving
- washing or getting dressed
- cooking or eating
- using public transport
- talking or hearing
- writing, typing or reading
- carrying or moving things
- being able to concentrate or understand
- being able to form social relationships.

The Equality Act 2010 is complex and much more could be said about the case you have raised. Frequently, however, such grievances are not well founded and do not meet the legal definition of disability.

In an Employment Appeal Tribunal case the Judge gave this advice to tribunals:

*"In my opinion, generally speaking, where unambiguous words of resignation are used by an employee to the employer direct or by an intermediary and are so understood by*

*the employer, the proper conclusion of fact is that the employee has in truth resigned. In my view Tribunals should not be astute to find otherwise”.*

There are two further legal points to note. The first is that if a resignation is accepted there is no legal requirement to give reasons. The second is that the employee can resign with or without notice. If the club interprets that the resignation was given without notice there is a risk that it could be faced with a claim for wrongful dismissal. Although not essential, a resignation in writing would be preferable to a verbal resignation.

*Golf Club Management - December 2014*

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