EMC HR Bulletin – In Deep with Darren

January 2026

This month, Darren offers advice about managing an employee, including communications with them, during long-term sickness absence

One of the dilemmas that employers face when managing an employee on long-term sickness absence is the extent to which they should be included in any discussions about changes taking place in the workplace. On the one hand it is clearly desirable that the employee is kept in touch with developments – especially if they are expected to make a return to the workplace at some point. On the other hand, employers can worry that involving the employee in workplace issues too much could be seen as inappropriate and a disruption of the employee's recovery process. How is the right balance to be struck?

The employer clearly got it wrong in the case of Wainwright v Cennox plc. The employee, Ms Wainwright, had been employed for many years in a small business where she was Customer Services Director. She was then transferred under TUPE to a much larger organisation where she was no longer a director and was given the job title 'Head of Installations' (we are given no clue as to what was actually being installed). In 2018 she was absent for an extended period of time while she received treatment for cancer, but she was ready to return after a few months away.

During her absence, however, a colleague announced her intention to leave and – partly to retain her – the employer reorganised the department, giving that colleague the 'Head of Installations' job title. The employer told the Tribunal that they hoped that there would be sufficient work available for there to be two employees with that title once Ms Wainwright was ready to return. It is not clear how realistic that hope was.

The Tribunal accepted that the reorganisation that the employer undertook was prompted by genuine business reasons and found no fault with the fact of the reorganisation itself. However, they were critical of the employer's decision not to involve the employee in the discussion. Ms Wainwright only discovered that a colleague had been given her job title when Linked In prompted her to congratulate the colleague on her new role. When she contacted the employer, they told her that the new appointment would have no impact on her role and was only a temporary measure. That was not true, but the employer did not want to cause her additional stress and anxiety given the nature of her absence.

The result of course was that the employee was even more upset when she eventually discovered that the reorganisation had effectively left her in what she felt to be a more junior position. Indeed, Ms Wainwright was so upset at what had happened that she took a further period of stress-related absence and – after an unsuccessful grievance – resigned altogether.

The Tribunal found that Ms Wainwright was not treated less favourably as a result of her cancer diagnosis – there was no direct discrimination. They also found that the reorganisation was not prompted by her disability related absence but by the desire to persuade an employee to stay with them rather than resign. When it came to their communication, however the Tribunal found that the employer had treated Ms Wainwright less favourably because of something arising in consequence of her disability. Her disability had caused her absence, and it was the long-term nature of the absence that led the employer to think that it would be OK not to tell her what was going on in the hope that a way forward could be found when she returned to work. On that rather limited basis they upheld her claim for disability discrimination. However, they rejected her constructive dismissal claim and her claim for what was, in effect, a discriminatory constructive dismissal because on balance they felt that the employer was not in fundamental breach of contract.

The EAT allowed an appeal. The Tribunal should have considered whether the failures in communication that they had identified as amounting to discrimination could also be said to amount to a fundamental breach of contract and whether they had been an effective cause of Ms Wainwright's resignation. The Tribunal seem to have dismissed both possibilities but without properly explaining why, so the case was sent back to a fresh Tribunal to address that point.

Darren's Advice to Employers

Clearly the employer would have done better in this case to have been open and honest with the employee about what they were doing. But it is easy to understand why they behaved as they did. With a cancer diagnosis, the question of whether and when the employee will return to work can be a particularly delicate one and it would be extremely insensitive for the employer to press the matter too hard.

One solution is to set the boundaries early and agree how the employer will communicate with the employee over the course of their absence and what issues it would be appropriate to mention and how and when the employee wants the employer to communicate with them.

Where something is happening that would be the subject of consultation, then the employee should certainly be involved in that but again, the extent to which they engage should be a matter for them to decide.

A safe route for communication – usually through HR – should be established – and it may be wise to agree that communications should be channelled through a particular family member in cases where the employee may be going to go into hospital or be unable to communicate. This can be arranged in a sensitive and supportive way without suggesting any obligation on the employee.

But as the Wainwright case shows, sensitivity should not lead the employer to actively mislead the employee. That is only going to make things worse later and a Tribunal is unlikely to criticise an employer for telling the truth - providing they do so with appropriate tact and understanding.