



### **Disability/Reasonable Adjustments Can Include Protected Pay\***

In the UK case of G4S Cash Solutions (UK) Limited v. Pawel UK EAT/0243/15 the UK EAT upheld the Employment Tribunals findings that it was a reasonable adjustment for an employer to continue to pay indefinitely a disabled employee the same rate of pay despite having being moved to a more junior role on his return to work. Mr. Pawel was employed by G4S Cash Solutions (UK) Limited as a single line maintenance engineer. Following a period off work with back pain he returned to work on the understanding he could no longer be in a job that involved heavy lifting or working in confined spaces. In the UK an employer has a statutory duty to make reasonable adjustments under the Equality Act 2010 to ensure a disabled person access to employment. The reasonableness depends on factors such as ease and cost of implementation among other things. Mr. Pawel was given a lesser roll at a t-runner providing support to a single line maintenance engineer. There was no formal agreement entered into but he returned to work on the same level of pay. Later the role was made permanent but given that it did not require engineering skills G4S proposed reducing his salary. Mr. Pawel did not accept this.

The UK EAT held that it could find no reason in principle why protecting the pay could not be considered a reasonable adjustment in assisting an employee return to work. It said that the question whether it was reasonable for that particular employer was separate and should be considered on a case by case basis. They declared there was a distinction between the impositions of a particular adjustment on an employee without their consent as fulfilment of the employers statutory duty verses imposing a variation on the employees contract which was a contractual matter requiring the employees consent. They held that the adjustment was one that was not compatible with the existing contract and that the employee was not obliged to accept it because such an adjustment requires agreement in order to be effective. The EAT held that the change to a lower rate of pay was a clear unilateral change to the contract. They concluded that this was not part of the band of reasonable adjustments the employer should have made and therefore the pay should have been protected.

While this is a UK case it is still an interesting case as regards the rights of employees here in Ireland and the obligation of employers.



**\*Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

**\*\*In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**