

LONG TERM DISABILITY SCHEMES*

Many employers will have in place a long-term Disability Scheme for employees who become disabled. This is usually covered by the way of a premium to an insurance company.

An issue is now arising or has been identified as one which is likely to arise in relation to the issue of an employee who is been dismissed due to a medical incapacity.

All employers will know that there is an obligation to reasonably accommodate an employee under the Employment Equality Act 1998 to 2015 where an employee has an incapacity or disability. No employer should dismiss an employee without having the employee medically examined, getting a report on the likely return date of the employee or that the employee will not be able to return to work, making sure that the employee has an opportunity to review same or produce their own medical evidence to counter same and that the employment is not terminated without fair procedures having been gone through and the employer investigated whether the employee can be reasonably accommodated.

That is well known.

Another issue has now arisen due to a case in the UKEAT AWAN-V-ICTS UK Limited. This case has raised the issue that a term can be implied into an employment contract that once an employee is entitled to a benefit under an employer's Long Term Disability Scheme that an employer in those circumstances cannot terminate the employee by reason of incapacity for the issue that has been raised in the UK in effectively dismissing the employee in such circumstances may give rise to a claim of breach of contract up to the value of the Long Term Disability Scheme. This can be an excessive sum of money if you have an individual who is 30 or 40 which would have to be kept on until normal retirement age and at the same time which would fund the employee into the company Pension Scheme.

There is now an issue that Courts may be prepared to imply a term into an employment contract to prohibit the dismissal on the grounds of incapacity where an employee is entitled to benefits under a Long-Term Disability Scheme. Of course, the employee could be dismissed in our view for redundancy and possibly also a summary dismissal for cause. If the dismissal is undertaken simply to avoid the employee

being able to claim a Long-Term Disability Benefit then this may open a huge risk for an employer.

Where an employer is considering terminating the employment of an individual for example where they are being assessed or there is a waiting period to qualify extreme care should be taken.

In any case where you are dealing with an employee maybe dismissed due to incapacity or who has an incapacity and may even be subjected to potential redundancy or possibly disciplinary action it is always important to obtain legal advice before dismissing the individual. Where there is a potential the individual employee could lose an entitlement to the Disability Benefit under a Company Disability Scheme then we can only say that extreme caution should be exercised.

****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 as a proportion or percentage of any award or settlement.***