



# Ill Health Retirement - A Contractual Entitlement?

The EAT has held in the recent case of *First West Yorkshire Ltd t/a First Leeds v Haigh*, that the employee was unfairly dismissed following the employers failure to properly consider whether the employee was entitled to an ill health retirement or pension.

The employee in this case had been employed as a driver for some 30 years when he suffered a stroke in August 2005. He was signed off work and his drivers licence was suspended for a minimum of 12 months. In October 2005 the employee suffered a second stroke which meant that he would not be able to reclaim his licence until some time in 2006. The company sick pay scheme stated that if an employee was incapable of carrying out their role, then the company would consider them for other suitable employment. If no other suitable alternatives were available, then the employee would be retired or dismissed on medical grounds. The terms of the ill health pension scheme were of particular benefit to an employee who gained additional years credit for the purposes of calculating their pension, but it came at an extra cost to the employer who was required to fund the additional contributions.

The company took the view that the employee's ill health was not permanent and that consequently he did not qualify for a medical retirement. On these grounds, the company proceeded to dismiss the employee on the grounds of his capa-

bility to carry out his job. The employee appealed against the decision to dismiss him. At his appeal meeting, the company gave him the choice to have his sick pay extended until he reached 60 when he could then retire, on condition he did not seek the ill health retirement pension - or he could be dismissed from his employment. The employee was unable to accept either option and made a claim for unfair dismissal in the Employment Tribunal. He was successful on the grounds that the company had failed to properly consider an ill health retirement for the employee. The company appealed against the decision on the basis that it was reasonable for them to dismiss as the employee had been absent for eight months and was not expected to return to work for at least a further eight months.

The Employment Appeal Tribunal found that an ill health dismissal would usually be a fair dismissal if the employer took reasonable steps to consult with the employee and to ascertain the appropriate medical evidence. The EAT also found that where an enhanced ill health retirement pension was available, that they would expect the employer to take reasonable steps to determine whether the employee was entitled to such benefit and if the employee was so entitled then dismissal could be avoided altogether. The EAT agreed with the Employment Tribunal that fairness and reasonableness required the employer to consider an ill health retirement scheme before

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any dismissal took place on the grounds of absence through ill health.

This case is a warning to all employers who provide contractual enhanced benefits that they cannot seek to take those benefits away if it appears that an employee may qualify for such. Interestingly the company had not secured a final medical report about the employees condition before it dismissed him. It is a further reminder to all employers to be aware of the benefits that employees are eligible to claim and, in order to avoid costly mistakes, that full investigations should be carried out, even if it means waiting slightly longer to effect a dismissal than it might otherwise prefer.

If you require any advice or guidance on employee benefit schemes or employee contracts, please contact Judith Curran on 020 8768 7022.

These notes are not intended as a substitute for reference books or other legal materials. Nor are they intended a primary source of information upon which to base advice or opinion in any particular case.

The reader should refrain from taking any action based solely upon the basis of these notes.

We have made every effort to ensure the accuracy of these notes. If there are mistakes, we apologise and ask you to let us know, however, we cannot accept any responsibility for the consequences of such errors.

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