

# BREAKING OCCUPATIONAL HEALTH NEWS

*From*  
**Preventative Healthcare Company Limited**

*There have been a number of key publications over the summer months which we felt were important to highlight to our clients. What follows is an introduction to each of these issues in the hope that it will encourage you to explore further those issues particularly affecting your organisations and employees.*

## The Disability Discrimination Act 1995 – Landmark Judgements Clarifying This Legislation

In July two landmark Judgements were published, one from the House of Lords and the second from the Court of Appeal. They also gained a significant amount of media attention, particularly on the radio and in the major UK press. The names of Archibald and Meikle may already be familiar to you.

The House of Lords decision with regards to the case of *Archibald -v- Fife Council*, the House of Lords ruled unanimously that the Disability Discrimination Act 1995 overruled the employer's own redeployment policies. If an employee is no longer able to undertake their job because of a disability the employer must transfer them to a suitable vacant position, even if that job is at a higher grade and importantly without requiring them to take part in a competitive interview!

This Judgement demonstrates that the Disability Discrimination Act 1995 is very different from sex discrimination or gender discrimination legislation and in fact is unique.

The Court of Appeal's decision in the case of *Nottinghamshire County Council -v-Meikle* will impact on all employers, particularly with regards to redeployment and sickness absence policies.

Mrs Meikle was a Council employee who was off sick. The Council was advised that her case was covered by the Disability Discrimination Act, and she waited for her employer to make reasonable adjustments to the workplace or review the potential for redeployment to a suitable vacant position. The Council's policy was after a certain months to reduce an employee to half pay and then to nil pay. The Court of Appeal's decision was that the Council should not have reduced Mrs Meikle's pay. Doing so places the employer at risk to claims for both disability discrimination and constructive dismissal.

This ruling has significant implications for an organisation's sick pay scheme. If an employee covered by the Disability Discrimination Act has their pay reduced under the company's current policy observing the terms of their contract of employment this could amount to disability discrimination. If the employee is waiting for the employer either to make reasonable adjustments so they can return to work or the employer is reviewing the potential for redeployment, the ruling implies that their pay should not be reduced. Such a situation obviously can be avoided by quick and effective implementation of an absence management policy, and involving occupational health at an early stage to determine particularly whether a case is covered by the Disability Discrimination Act and exploring reasonable adjustments.

The Archibald case indicates that the world of work is not a level playing field where disability discrimination is concerned. The House of Lords went on to indicate that the disability overrules any other possible candidates and the decision implies that if two

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candidates equally suited for the role are available but one is covered by the Disability Discrimination Act 1995, it is the disabled candidate who should be chosen. The House of Lords are on record confirming that this in fact is positive discrimination. Subsequent cases obviously may clarify this decision.

### **Data Protection – The Workers Health Information Code**

Many clients are concerned with regards to how much information from a PHC Occupational Health report they are allowed to share with their employees. Many employees request copies of PHC Occupational Health's reports. Preventative Healthcare is committed to an atmosphere of openness and transparency with regards to health issues, assisting their clients to comply with Data Protection legislation.

During the summer the Information Commissioners Data Protection Code on "Information About Workers Health" was published. The Workers Health Information Code is a useful guide to assist employers to comply with the Data Protection Act 1998. The sections of the code already published cover the subjects of recruitment and selection, employment records and monitoring at work.

The code's guidance on workers health information provides employers with guidance on handling sensitive medical data on employees and covers such subjects as health surveillance, the requirement for employers to meet their statutory obligations under Health and Safety at Work legislation, the issues of the Disability Discrimination Act 1995, medical confidentiality, the development of a

confidentiality policy ensuring that any health professional working for an employer maintains high levels of patient confidentiality, the release of sensitive medical information in legal proceedings and the important issue of an employee's consent to the recording and processing of his or her medical information.

Further information is available at [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk). The release of sensitive occupational health information, particularly in the form of a report, is one of the most difficult areas for employers to manage. At Preventative Healthcare we are very happy to assist our clients manage the requirements of the Data Protection Act 1998 where it applies to occupational health data.

We commend to you the Workers Health Information Code.

- ◆ **Did you know PHC have a Health & Safety Consultant?**
- ◆ **Could your company benefit from a Stress Audit Programme?**
- ◆ **Do you ever require workplace assessments or personal risk assessments carried out?**

If you feel your company could benefit from the services provided by David Wigen, PHC's own Health & Safety Consultant, please contact Jane Puncher who will be pleased to provide more information for you.

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