

Bulletin 174

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JOB SWAP IS A REASONABLE ADJUSTMENT UNDER THE DDA

In the case of *Chief Constable of South Yorkshire Police v Jelic* the EAT have upheld a tribunal decision that to swap a non-disabled employee's role with a disabled employee's role was a reasonable adjustment.

It is already well established that a reasonable adjustment under the Disability Discrimination Act 1995 includes transferring a disabled employee to fill an **existing vacancy**. Case law has extended this to include a transfer to a more senior role without an interview and the creation of a new post where appropriate.

However the decision in *Jelic* appears to go much further as employers will now be required to consider whether it would be an appropriate reasonable adjustment to swap a non-disabled employee's post with that of the disabled employee.

Although this decision appears to impose an onerous burden on employers the case may not be as far reaching as would first appear. The decision is very fact sensitive involving the police force, a disciplined service whose employees are required to obey lawful orders and where there is a great degree of flexibility and interchange of roles and duties. In this environment it is perhaps unsurprising that a non-disabled police officer could have been 'ordered' to swap their role to accommodate a disabled officer. This is perhaps not a step that all employers could reasonably be expected to take.

It was also relevant in this case that there had been no consultation with the disabled employee as to what could have amounted to a reasonable adjustment. The option of swapping roles was never considered and the Claimant was instead "retired" on the grounds of ill health, a decision that was heavily criticised by the EAT. Further the EAT made it clear that swapping roles would not be an appropriate reasonable adjustment in all circumstances.

👉 Practical Tip

This case is a timely reminder to employers that they must consider all reasonable adjustments including job swaps in appropriate cases. Consultation with the disabled employee is key but the onus is on the employer not the employee to consider all reasonable adjustments.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to helen.calvert@brabnerscs.com

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