

DON'T discriminate, communicate



The case of two dental nurses awarded a combined figure of more than £16k by an employment tribunal highlights the importance of treating part-time workers equally. The BDA's **James Goldman** explains the concept of indirect discrimination and how to avoid being accused of it.

Two dental nurses were made redundant in July 2017 because the practice was overstaffed. This was according to the many reports covering the employment tribunal which awarded them more than £16k between them. The problem was that the two staff in question were part-time workers. The tribunal said the dismissals were unfair and amounted to indirect sex discrimination.

So what is indirect sex discrimination, and how does it affect part-time employees in a dental practice?

Indirect discrimination against women involves having a rule or condition that makes it more difficult for women to comply with. For example, if you have a minimum height rule, it will be more difficult for women to comply because women tend to be shorter than men.

There will be some jobs where you need a minimum height rule. Say, for example, police motorcycle riders, who need to be able to put their feet on the ground when they're riding their motorcycle. Otherwise they'll fall off when they stop. So employers can have a minimum height rule if they can justify it.

But even this example of a police motorcycle rider is not clear cut. Employment law will want the police to try and accommodate shorter people. It could be there is a simple adjustment that could be made that would allow a shorter person to ride the bike, or another type of bike, safely.

Another common rule that makes it more difficult for women to comply is requirement to work full-time. More women than men work part-time. So a rule that makes it more difficult for women can be indirect discrimination.

And, in the case of these members of practice staff, selecting the part-timers for redundancy

is as good example as any of indirect discrimination. The practice would need a compelling reason to have a rule that only part-timers were selected for redundancy. That compelling reason could not exist if the dental nurses already worked part-time at the practice before. And they did!



'FROM OUR EXPERIENCE OF ADVISING DENTAL**PRACTICES, MANY PRACTICES APPEAR TO HAVE****PART-TIME STAFF TO SOME DEGREE. AND MOST****PRACTICES FIND A WAY TO MAKE IT WORK.'****Equal treatment for part-time workers**

Employees who work on a part-time basis should be treated the same as full time workers. They should get the same pay for the same work. They should get the same amount of paid holiday pro-rata, the same access to opportunities and training.

Treating part-time workers less favourably than full time workers may well be against the laws protecting part-time workers and may also be indirectly discriminatory.

Requests to work part-time

Although part-time workers are protected by employment legislation, they cannot demand to work whatever hours they want. And

part-time workers are not immune from dismissal or redundancy.

Employers are able to ensure that they have the staff necessary for their business to function effectively.

Practices cannot, for example, be forced to open later and close earlier to accommodate part-time workers. I would argue that most

Put simply, the law says that employees can ask to change their hours. The employer has to consider the request. If the employer cannot readily agree it, then the employer and employee need to meet to discuss the request. The law sets out a procedure that needs to be followed. A record of the conversation should be made.

From our experience of advising dental practices, many practices appear to have part-time staff to some degree. And most practices find a way to make it work.

In some cases, a dental practice may well find it difficult to accommodate a request to work part-time. If that's the case, then that may be fair enough. If asked about the refusal, the employee should be saying (truthfully) 'My employer was really good about my request. We sat down and discussed it in detail. We explored different options. I do understand why my employer couldn't agree, and it is fair enough.'

There is no reason why employers cannot try allowing someone to work part-time to see how it works. The parties could always agree to revert to the original hours if the trial didn't work.

In most cases, problems can be resolved with good communication, a little common sense and some careful thought. Managers and practice owners may find that their staff have some constructive suggestions. Engaging with staff should lead to better outcomes and fewer problems.

Unless employers try and discuss things with their employees first, they may find themselves in difficulty. All employers should remember: good communication will protect you from charges of discrimination.

James Goldman is the BDA's Associate Director of Advisory Services and a lawyer with over 15 years experience.

employment law is aimed helping employer and employee to talk to each other effectively.

Requests to work part-time is as good an example as any of this.