



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs A Rajput

**Respondent:** Priory Healthcare Limited

**Heard at:** Leicester      **On:** 20 September 2018

**Before:** Employment Judge Ahmed (sitting alone)

## Representation

**Claimant:** Mr Bidnell-Edwards of Counsel

**Respondent:** Ms Hodgetts of Counsel

# JUDGMENT

1. The Claimant has leave to amend her claim to bring a complaint of indirect sex discrimination.
2. Directions and orders as to the amended complaint of indirect sex discrimination are given separately.

# REASONS

1. This Preliminary Hearing was convened to determine the Claimant's application for an amendment of her claim to include a complaint of indirect sex discrimination.
2. The Claimant issued proceedings on 3 April 2018, drafted by herself when she was a litigant in person, bringing complaints of unfair dismissal, direct sex discrimination and detriment for having suffered less favourable treatment by reason of being a Part-time worker.
3. The complaint of direct sex discrimination has now been dismissed upon withdrawal. The Claimant is effectively seeking to substitute that by amending her claim to include one of indirect sex discrimination.
4. Mr Bidnell-Edwards submits that this is in effect a re-labelling exercise. Ms Hodgetts on behalf of the Respondent points to the history of the litigation and in doing so highlights the rather unsatisfactory way in which the case now proceeds to the present application. In particular she points out that it is not clear when the Claimant actually instructed solicitors on her behalf and so it is not clear when the need to amend would have arisen. She points out that there has been no evidence from the Claimant in relation to the timing and the manner of the application. There has been no evidence as to the reason for the delay in making the amendment application and there is a lack of

evidence generally to establish why time should be extended. It is the Respondent's contention that any the amended complaint would now be out of time.

5. The leading authority on amendments is of course **Selkent Bus Company and Moore** [1996] IRLR 661. In deciding whether to exercise its discretion to grant leave for an amendment the Tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. The relevant circumstances include:-

- 5.1 the nature of the amendment;
- 5.2 the applicability of statutory time limits;
- 5.3 the timing and manner of the application.

6. I am satisfied that this is essentially a re-labelling exercise. This is fundamentally the same factual complaint as before now brought as an indirect, as opposed to a direct, sex discrimination complaint. The Claimant says in her ET1 that she was a part time worker, that she was not selected or not able to apply for roles. That to my mind sets out the adequate factual substratum which is necessary for a complaint of indirect sex discrimination to get off the ground. I would therefore regard this as a re-labelling exercise.

7. If I am wrong on that I would have allowed the amendment on the grounds that the balance of hardship favours the Claimant. A refusal of the amendment would mean that the Claimant loses a potentially significant head of claim whilst there is no real prejudice to the Respondent other than the fact that they will need to defend such a claim. The case is still in its early stages with some 9 months before the full merits hearing. There is therefore plenty of time for the Respondent to prepare their case .

8. As to time limits the new complaint would now on the face be out of time but only by a relatively short period subject to the just and equitable discretion to extend. So far as the timing and the manner of the application is concerned I am satisfied that the Claimant's solicitors have acted without any unreasonable delay in making the application

9. For the reasons given the application to amend is granted.

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Employment Judge Ahmed

Date: 10 January 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE