



# THE EMPLOYMENT TRIBUNAL

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**Claimant:** Miss I. Ekwobi

**Respondent:** London Borough of Bexley

Heard at: London South Employment Tribunal (by CVP)

On: 8 December 2022

Before: Employment Judge A. Beale

Representation  
Claimant: In Person  
Respondent: Mr G. Atkins (solicitor)

## JUDGMENT ON AMENDMENT APPLICATION

- 1. The Claimant's application to amend to include a complaint of indirect sex discrimination is allowed.**

## REASONS

1. The Claimant has brought a claim for constructive unfair dismissal, race and disability discrimination. She makes an application to amend her claim, most of which is accepted by the Respondent (subject to clarification that time limits remain in issue in all claims), but the Respondent does not agree to the application to include a claim of indirect sex discrimination. The substance of the allegation is that the Respondent imposed a PCP of requiring employees to work non-flexible hours, which placed her as a particular disadvantage particularly during the period when schools were closed owing to Covid-19 in 2021. The Claimant contends that this placed her, and women more generally, at a particular disadvantage.
2. It is agreed that the Claimant's ET1 did not refer to sex discrimination, whether direct or indirect. However, the chronology attached to the claim included the following information:
  - 2.1 the Claimant advised a manager that she was struggling to cope and asked to be allowed to compress her hours to manage the pressures of home-schooling caused by the Covid-19 restrictions and work pressures, because she was a single parent with no family support;

- 2.2 the request for flexible work was refused, although the Claimant was told that her line manager would discuss the request on her return from sick leave and might change her mind;
  - 2.3 the Claimant was told she could work compressed hours for a period of 2 weeks, and that her workload would not be reduced;
  - 2.4 the Claimant felt there was a disregard by the Council of the additional pressures on her as a result of her childcare responsibilities.
3. The Claimant's application to amend states that this is a re-labelling exercise, of the type described in *Selkent Bus Co Ltd v Moore* [1996] ICR 836. It further states that the Claimant should not be prejudiced because she was a litigant in person at the time of submitting her claims and did not have the legal knowledge properly to particularise them. She would be more prejudiced were her claims not to be accepted, as her claim would not be properly heard, than the Respondent would be were the amendment to be allowed. This is particularly so given that a list of issues has not yet been agreed between the parties and there is time for the Respondent to respond in full to the allegations.
  4. Mr Atkins, on behalf of the Respondent, makes the point that the claim form contains no mention of sex discrimination. He further says that a letter was received from the Claimant's then legal advisers in May 2021 which did not mention an indirect sex discrimination claim. He points out that this application is made relatively late in the day (the hearing is listed for 19 – 23 June 2023), and asks when the Claimant first received the advice that led her to apply to amend in this way.
  5. In response, the Claimant explained that the first legal advice she received in May 2021 was general advice. It was only after attempting to comply with the orders from the last preliminary hearing that she was able to obtain detailed legal advice through the legal help scheme. Her file had been with these solicitors since November but she had only been able to speak to them three days previously.
  6. In considering this application, I took into account the principles set out in *Selkent Bus Co Ltd v Moore* [1996] ICR 836, and the recent guidance of the EAT in *Vaughan v Modality Partnership* [2021] ICR 535.
  7. I agree with the Claimant that this application is either a relabelling or something very close to it. All the ingredients on which the Claimant relies for her indirect sex discrimination claim are contained in her initial chronology as set out above. The PCP is already pleaded in essence (refusal to allow flexible working) and both the disadvantage and the reason for it (the Claimant's childcare responsibilities and single parent status) are explicitly set out. Although the Claimant does not state that the PCP placed women at a particular disadvantage, the "childcare disparity" is so well-known as to be the subject of judicial notice.
  8. Even if this is a relabelling, it appears that the claim may have been brought out of time, as the early conciliation notification in this claim was made in July 2021 and these events occurred in January and February 2021. However, at this stage, all I need do is consider whether there is a prima facie case that the claim has been brought in time, or that it is just and equitable to extend time. It is possible that this act could be regarded as forming part of an act extending over a period, culminating

in the Claimant's alleged constructive dismissal. Furthermore, given the explanation for the delay provided by the Claimant, there is at least a prima facie case that it would be just and equitable to extend time.

9. Weighing the balance of prejudice and hardship between the parties, if the Claimant is not permitted to advance this claim, she will be deprived of any claim or remedy in respect of this conduct. On the other side, whilst the Respondent will have to deal with an additional legal claim, it has been fully aware of the facts on which this claim is based since August 2021 when the Claimant submitted her ET1. It has not been suggested to me by Mr Atkins that the Respondent would be unable to respond to this allegation, or that any particular witness is unavailable or would not be able to remember the relevant events.
  
10. I have reached the conclusion that the balance of prejudice and hardship favours the Claimant in this instance and I have therefore decided to allow the amendment. However, I have not made any decision as to whether the indirect sex discrimination claim has been brought in time, and that remains a matter to be determined at the full hearing of this claim.

Employment Judge A. Beale  
Date: 8 December 2022