

News

Mother of disabled child wins tribunal after being forced out of job

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By **Annie Makoff**

Woman's employer deemed her daughter to be a bigger priority than her job; lawyers advise caution when dismissing staff with caring responsibilities

Employers should "proceed with caution" when dismissing staff who are carers, lawyers have warned, after a tribunal ruled that a woman with a disabled daughter was discriminated against.

Maria McKeith, who had been working part time at community advice service the Ardoyne Association since 2010, was dismissed in March 2015 because her employer believed her daughter was a bigger priority than her job.

According to the BBC, the tribunal held that this was not a valid legal position and said the Belfast-based advice service did not put forward any "convincing or coherent explanation" for its decision. It found the dismissal was contrary to Northern Ireland's Disability Discrimination Act 1995.

"People who are disabled themselves, or who are the primary carer of a disabled person, have a right to work within the protection afforded by the 1995 Act," it said.

McKeith was awarded £18,886, comprising £10,000 for injury to feelings, £6,760 for loss of earnings and £2,126 in interest.

The Ardoyne Association appealed the ruling but this was dismissed by the Court of Appeal.

The case is thought to be the first of its kind in Northern Ireland where a successful disability discrimination case relates to a disabled child of an employee, although there have been similar cases elsewhere in the UK.

In 2009, the European Court of Justice found in favour of Sharon Coleman, a primary carer for her disabled child, when she was forced to leave her job because of caring responsibilities. It ruled that protection from disability discrimination should also extend to her.

According to Rachel Farr, senior professional support lawyer in the employment, pensions and mobility group at Taylor Wessing, that case set a precedent for 'associative discrimination' – discrimination based upon association with someone with a protective characteristic – to be extended to all types of discrimination, including race, age, sex, sexual orientation and religion or belief, and passed into statute in the Equality Act 2010.

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of their caring responsibilities for a disabled relative.

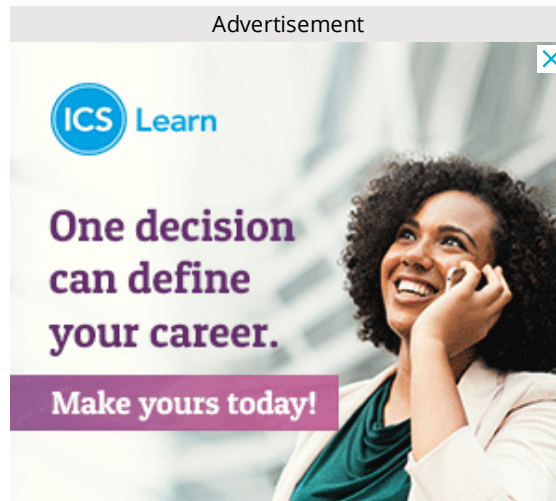
Gallagher said: "The employer in this case appears to have concluded that the employee's job was not her priority, given her caring responsibilities. In relying on that view in selecting her for redundancy, they were found to have discriminated against her unlawfully.

"While a fair selection criteria in a redundancy exercise can properly include matters such as attendance and timekeeping, employers must be alive to the reason for those absences and, where disability is part of the picture, they should proceed with caution."

Harriet Bowtell, employment lawyer at Slater and Gordon, said: "It is unlawful to treat someone less favourably than another person because of their association with their disabled child. The law provides very important protection for carers who have to balance their caring commitments with their career."

But Vivienne Reeve, senior associate at Gowling WLG, told *People Management* that discrimination was not always based on malice but "misplaced and inappropriate intention".

Reeve said: "The tribunal rejected the patriarchal view of the employer, that McKeith's place was with her disabled daughter – which they found was the true reasons for her dismissal, rather than the apparent redundancy. But it was not for the employer to send her home to be with her daughter when she was ready and willing to work."





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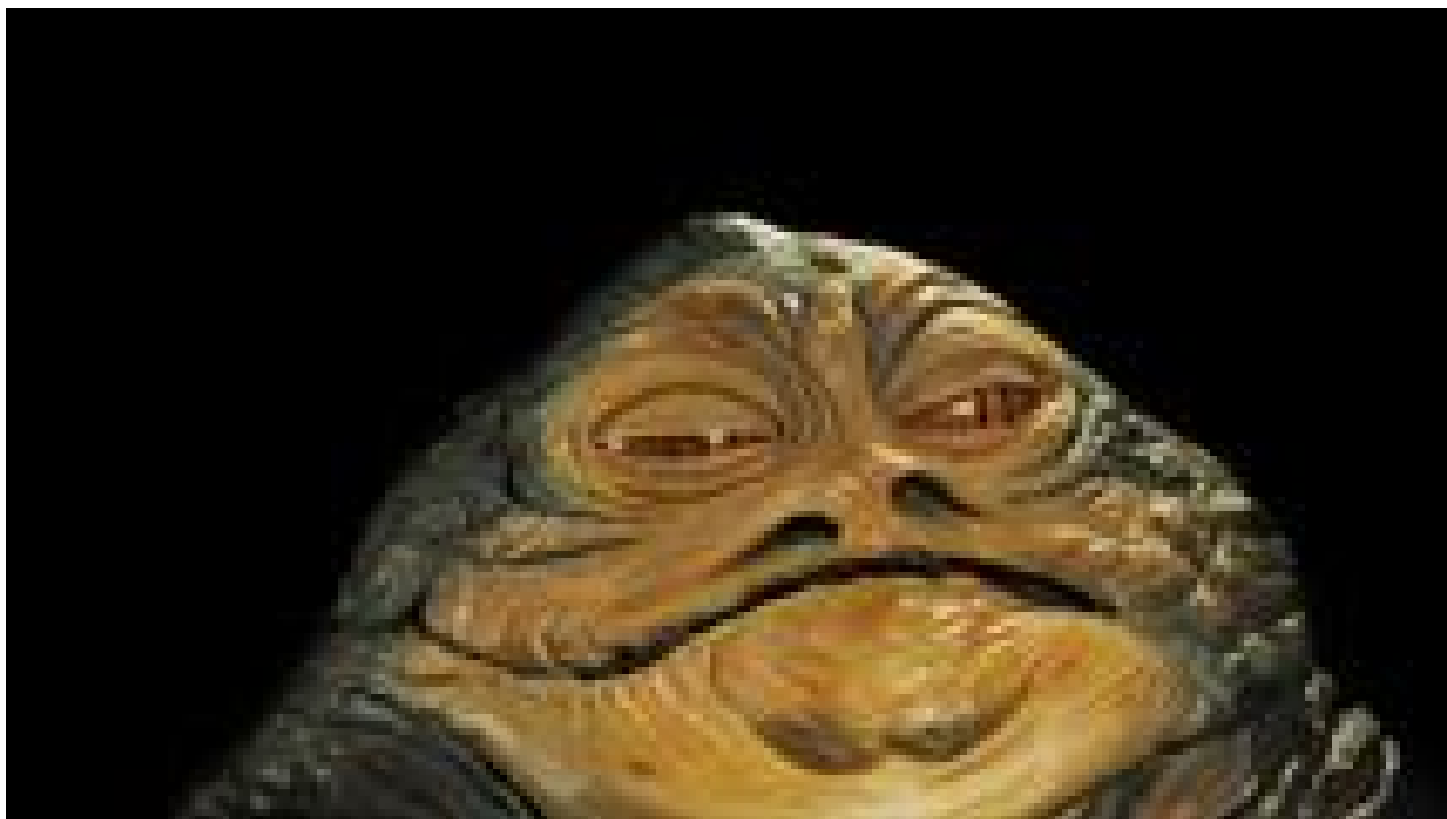
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