

Civil servant was not discriminated against for remote-work request

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A civil servant was not discriminated against on the grounds of family status when she failed a probation review following a request to work from home, a WRC adjudicator has found.

The complainant, Catherine Power, claimed that she was working well in her new role and suddenly after seeking accommodation for her family status one day, her relationship with her team rapidly deteriorated and she was failed probation.

She alleged that she had been discriminated against on the basis of family status.

She also claimed under the Safety Health and Welfare at Work Act that her treatment was in retaliation for having raised a complaint regarding a member of management. However, she did not advance a substantive case under this complaint.

WRC adjudicator (AO) David James Murphy was satisfied that the complainant's probation review was unrelated to her request for remote working. He determined that both complaints were not well founded.

REQUEST DENIED

The complainant is a civil servant employed by the respondent, the Department of Housing, Local Government and Heritage.

In 2022, she had recently been promoted to the grade of Higher Executive Officer and was serving out her probation.

The respondent was beginning to return workers to the office as the Covid-19 restrictions had finally ended.

In February 2022 a particular date was set by which an employee must attend at least one day in office, with the only exceptions being medical.

Shortly before this date, the complainant had a significant family issue in that her husband was injured, and she requested to remain working remotely to facilitate childcare. This request was denied.

She then failed her upcoming six month probation review meeting. This resulted in her having to return to the office full time.

The respondent submitted that they legitimately and fairly assessed the complainant's performance. She was not discriminated against and was facilitated with extensive family related leave and paid sick leave. The complainant ultimately passed probation.

BACK TO WORK

From the outset there does not seem to be any tenable argument that the respondent is a particularly uncaring employer and would take any sort of issue with an employee facilitating caring duties or their family status, AO Murphy noted.

There was significant pressure to get employees back to the office at least one day a week. The complainant was, on short notice asking to stay out. This was related to her family status in that she needed to be at home to facilitate childcare.

The suggestion is that the complainant's family status indirectly resulted in some sort of penalisation from principal officer Ms Lynn Carroll because she was annoyed the complainant had tried to seek an exception to the mandated return to office.

FLAWED PROCESS

The complainant has established a number of issues with the probation report. There are a number of performance matters referred to by the respondent which don't seem to appear in the probation documents or post-date them. The complainant's evidence was that almost all of these were not brought up with her at the time. The assistant principal, Ms Orla Joyce, accepted that she may not have provided direct enough feedback.

Though the probational process was flawed it does not necessarily follow that it was unrelated to performance and an attempt at retaliation, AO Murphy noted.

Emails submitted by the complainant around 16 February also indicate that Ms Carroll and Ms Joyce had some concerns regarding the complainant's performance.

The AO was of the view that the key issue is whether the probation decision and associated requirements (such as full office return) were linked to the request to stay out of the office one day a week.

He was satisfied that there were concerns about the complainant's communication style, responsiveness, and alignment with organisational expectations.

Even in the context of a flawed process, he was satisfied that on the balance of probabilities, these issues resulted in the probation being failed at six months, not the request to work from home in February.

The complainant was represented by Allan Crann BL, instructed by Sean Ormonde & Co. Solicitors. The respondent was represented by Niall Fahey BL, instructed by the Chief State Solicitor's Office. (ADJ-00042916, AO: *David James Murphy*)