

# Occupational Health **[at Work]**

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## Our 50th issue

### OH pay and benefits

The second part of our exclusive biennial pay and benefits survey of OH nurses, physicians and hygienists examines working hours, benefits and career prospects. Workloads have increased across the professions but practitioners remain positive about their work.

### Motivation at work

Motivational theories such as the 'Hierarchy of needs', 'Theory X and Theory Y', and 'Expectancy theory' have shaped modern HR practice, but a knowledge of what motivates workers is also hugely important in occupational health.

### Workplace health promotion

The final part of our analysis of workplace health and wellbeing considers public policy, evidence and incentives.

### Dilemma

Is the term 'occupational hygiene' outdated and should it be changed to something that is more meaningful to those outside the profession? Two hygienists argue the case for change ... or not.

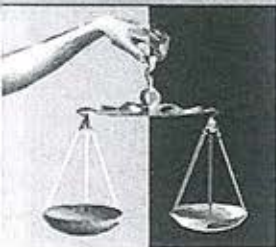
### Expert witness

Negligence and the duty of care: what it means for OH practice.

**PLUS:**

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## STORES MUST PROVIDE DISABILITY TRAINING

By Karen Jackson

An employment tribunal has issued a recommendation to the retailer Iceland that it should provide training on disability discrimination, specifically in relation to mental health.

The tribunal held in *Crisp v Iceland Frozen Foods Limited* that all members of human resources (HR) who guide managers on disciplinary and grievance matters, and all area managers, should undergo the training. The retailer should comply with the recommendation by 23 May 2013.

Section 124(2)(c) of the *Equality Act 2010* gives tribunals the power to issue a recommendation to employers to rectify the issues in the workplace which have given rise to discrimination.

Section 124(3) describes such recommendations: *'An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect of any matter to which the proceedings relate – (a) on the complainant; (b) on any other person.'*

Tribunals rarely exercise this power. The respondent is not obliged to undertake the action recommended – it is not an order – however, if it does not, and the company finds itself before another tribunal on the same charges, the tribunal is likely to take a very dim view of the conduct. There is also likely to be an inference that the workplace is by definition a discriminatory one. This would make defending future claims more difficult.

Mrs Crisp suffered severe panic attacks, which the company knew about, and it was accepted that she was disabled. She went off sick after 18 months in post and

submitted sick notes. Not all her sick notes reached the appropriate manager.

The company did not have an up-to-date address for her on file, which meant she could not be contacted. She was treated as having taken unauthorised absence and dismissed. Crisp only learned that she had been dismissed when she was not paid and her husband contacted the company to find out why. She appealed the decision.

Arrangements got underway to hold an appeal meeting. Crisp's manager, Mr Evans, would not allow her husband to accompany her at an appeal meeting. He did not appear to consider that doing so would be a reasonable adjustment for her disability.

Evans eventually conceded that someone other than a work colleague or trade union representative could accompany Crisp – and it was agreed that this would be her mother. Crisp's mother was, however, made to sit outside the hearing room.

In the course of arranging the appeal meeting, Evans and Ms Newbery, the area HR manager, had accidentally left a voicemail on Crisp's home telephone in which they made fun of her disability and laughed about how she might react in the appeal hearing. They had said: 'She'll spring a fucking fuse and have a panic attack, and that will be the end of that.' Crisp attempted to raise this at the appeal hearing but the company made no further enquiries about the distress this had caused and it was glossed over.

The appeal against dismissal was upheld. Crisp was offered a post in another store but she decided that she did not wish to return to work for Iceland and viewed herself as constructively dismissed on the basis that that

management did not appear to consider that she was really disabled or to take her condition seriously. She brought claims of constructive dismissal, disability harassment, direct disability discrimination and failure to make reasonable adjustments.

Crisp succeeded on all the areas of her claim and was awarded £7,729 compensation, including £7,000 for injury to feelings.

The directly discriminatory attitudes displayed by Evans and Newbery are most likely to have led the tribunal to take the unusual step of issuing a recommendation. Had Iceland been able to demonstrate that its employees had already been trained in equal opportunities it might have had a better defence on the basis that these events were an isolated incident.

*Crisp v Iceland Frozen Foods Limited*.  
(ET/1604478/11).