

Group Briefing  
October 2019

# Daly v Nano Nagle School: Landmark Supreme Court Decision on Reasonable Accommodation

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This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

## DALY V NANO NAGLE SCHOOL

The importance of this Supreme Court decision, which overturned last year's Court of Appeal decision, is matched only by the importance of understanding what it did and did not do.

What the Supreme Court did not do is conclusively determine this long running case, notwithstanding that the Supreme Court was the fifth court or tribunal to consider it and that Ms Daly and the school have now awaited an outcome of the case for the best part of a decade. The task of determining the matter has now been remitted to the Labour Court for further consideration of the issues in light of the guidance provided by the Supreme Court.

What the Supreme Court did do is establish certain key principles in this area of disability discrimination law which are likely to stand for some time. As a result, those core principles, and not the specific facts of this case, are the focus of this client update.

## GUIDANCE ON AN EMPLOYER'S OBLIGATION TO PROVIDE REASONABLE ACCOMMODATION TO A DISABLED EMPLOYEE

At the heart of this case is the interpretation of Section 16 of the Employment Equality Acts 1998-2015. Section 16 requires an employer to

take appropriate measures to facilitate persons with disabilities in accessing and participating in employment unless those measures would impose a disproportionate burden on the employer. Appropriate measures may include the adaptation of premises and equipment, working time patterns, the provision of training, or, most importantly in this case, the distribution of tasks. The question of what constitutes a disproportionate burden requires consideration of matters like the cost involved, the resources of the employer and the possibility of obtaining public funding or assistance.

The key points are the following:

1. The Supreme Court has broadened the scope of an employer's reasonable accommodation obligation by stating that there is no reason why providing reasonable accommodation should not involve a redistribution of what might be termed core "duties" as well as non-core "tasks". The Supreme Court has made it clear that an employer must consider potential actions concerning both duties and tasks in discharging its reasonable accommodation obligations. This completely overturns the Court of Appeal's approach to this issue, which in essence held that an employer was only required to

- consider a distribution of non-core “tasks” and did not need to consider redistributing or eliminating any “core” duties of an employee’s role.
2. Notwithstanding that significant change, much of the reasonable accommodation test remains the same, being one that is easy to state but difficult to apply. An employer is under a mandatory duty to take all “appropriate measures” (irrespective of whether that involves core “duties” or non-core “tasks”) unless any measure would constitute a “disproportionate burden” for the employer. The employer must demonstrate that they have fully considered the reasonable accommodation question. The Supreme Court in particular noted that the test “is one of reasonableness and proportionality: an employer cannot be under a duty entirely to re-designate or create a different job to facilitate an employee, as this would almost inevitably impose a disproportionate burden on an employer”.
  3. The Supreme Court confirmed that an employer has no binding legal obligation to consult with an employee or to allow them to participate in the process of assessing what is or is not reasonable accommodation. Nonetheless, the Supreme Court commented that “a wise employer will provide meaningful participation in vindication of his or her duty under the Act”, in particular in light of the importance of fair procedures under Irish employment law.
  4. The Supreme Court confirmed that an employer is under a mandatory duty to explore the possibility of obtaining public funding or other assistance when considering all reasonable accommodation which might be put in place.

5. The Supreme Court acknowledged that if an employee would not be able to fully undertake the duties of his role, even on the provision of all reasonable accommodation, then there is no discrimination at issue.

#### **GUIDANCE TO STATUTORY TRIBUNALS DETERMINING EMPLOYMENT RIGHTS**

The Supreme Court, in remitting this matter for final determination by the Labour Court, reiterated the importance of such statutory tribunals adhering to the following principles:

1. All relevant facts and evidence which are being relied on in making a decision must be recorded (at least in summary form). This is the case even when the facts are not in dispute.
2. All relevant facts and evidence must be considered and reasons must be provided for any conclusions reached based on same.
3. Reasons must be given for the amount of any award given, as the parties are entitled to same as part of their fair procedure rights.
4. If a statutory tribunal does not adhere to its statutory obligations (including those set out in the preceding three points), the courts will intervene.

Employers should take note that they have a right for the above to be included in any WRC or Labour Court decision in which they are involved. This is not limited to matters of employment equality law.

#### **ADVICE TO EMPLOYERS ON REASONABLE ACCOMMODATION REQUESTS**

1. An employer must not just look at what it can do to reasonably accommodate an employee by altering, removing or reassigning non-core “tasks” of an employee’s role but must also ask the same questions

in relation to the core “duties” of an employee’s role.

2. Otherwise, an employer’s reasonable accommodation obligations remain largely the same in the aftermath of the Supreme Court decision. When faced with a reasonable accommodation request, we recommend that employers continue to:

- » avoid kneejerk reactions, communicate/consult effectively with the person in question and follow applicable internal policies while remaining acutely aware that each case must be dealt with on its individual merits;
- » begin with the facts and ensure that you always have an up to date and informed medical assessment or other expert assessment;
- » remember that the ability to do the job is judged after reasonable accommodations are made;
- » identify potential accommodations and assess whether or not they would give rise to a “disproportionate burden” (which relates to the entire organisation and not just a particular team or division);
- » document all decisions and all underlying reasons;
- » remember that reasonable accommodation is an ongoing obligation.

3. Employers should also remain alert for future developments in this area, in particular for the Labour Court’s future determination of this matter, for which we will issue a further client update in due course.

*The authors wish to thank Jamie Brislane for her contribution to this article.*

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