

Employment Law Update

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In Brief

Employment law has also been making the news with Ms DiBique suing the MoD for sex and race discrimination.

Birmingham City Council loose tribunal decision over equal pay for female employees and face a possible £600M payout.

SCA Packaging v Boyle - £125,000 payout in landmark discrimination case. There are circumstances in which a fit person can win a claim under the DDA 1995 if it is shown that an impairment previously suffered and covered by the Act "could well" reoccur.

McFarlane v Relate Avon Ltd EAT found that the dismissal of a Christian relationship counsellor who refused to help same-sex couples was not in breach of the Employment Equality (Religion or Belief) Regulations 2003.

Welcome

April has brought in a host of new legislation. The Equality Bill has become an Act, although its main provisions do not come into force until October 2010, the Additional Paternity Leave Regulations have come into force for children expected to be born on or after 3 April 2011, the amount of maternity, adoption and paternity pay has increased to £124.88 and legislation allowing employees to request time off for training received the Royal Assent on 8 April 2010, with the Regulation coming into force on 1 October 2010. Plenty of changes to make April a busy month indeed.

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Equality Act 2010

The Equality Act, is finally here having received the Royal Assent at the beginning of the month. Some hoped it would never arise, others applaud it as a triumph for equality, diversity and fairness. For others of us, it means lots of late night reading to understand the fundamental changes in this mere 205 clauses, 28 schedules long Act. Some may argue that the legal draftsmen have been positively economic in their drafting considering the Act is designed to replace 9 major pieces of legislation and 100 other supplementary measures. Perhaps it was too hopeful to expect the Equality Act to be a short snappy document.

The official stance on the Equality Act 2010 is that it will strengthen our equality law by:

- Introducing a new public sector duty to consider reducing socio-economic inequalities;
- Putting a new Equality Duty on public bodies;
- Using public procurement to improve equality;
- Banning age discrimination outside the workplace;
- Introducing gender pay reports;
- Extending the scope to use positive action;
- Strengthening the powers of Employment Tribunals
- Protecting carers from discrimination;

- Offering new mothers stronger protection when breastfeeding
- Banning discrimination in private clubs;
- Strengthening protection from discrimination for disabled people.
- Protecting People from Dual Discrimination – direct discrimination because of a combination of two protected characteristics

If the Act is successful in its aims remains to be seen. It must be remembered that all the old discriminations still apply. The above represents only a fraction of the changes. For employers it is clear, running your businesses just became a bit harder.



Illegal Workers

Ensuring compliance with all the myriad of employment legislation is rapidly becoming the biggest headache that business faces. Recently disclosed statistics have shown that employers are increasing failing to abide by all the requirements imposed on them by government. A prime example of the burden placed on business are the figures provided by the UK Border Agency, which has revealed that the civil penalties issued rose from 1164 in 2008 to 2210 in 2009.

New data also shows that fines imposed on business for failing to check that workers were allowed to work in the UK almost doubled, from £11.2 million in 2008 to £22.1 million in 2009.

This is an illustration of how careful employers have to be in checking their employees status to work and remain in the UK. It is clearly not a rare occurrence for employers to fall foul of the legislation and be fined as a consequence. A regular check on work permits and clear diarising of expiry dates and other information is recommended.





Discrimination in the armed forces

The much publicised case of Ms Tilern DeBique, has sent ripples through the national press this month, not it would seem for the fact that she was bringing a claim against her employer, the British Army, but because of the amounts she was reported to have been claiming. After all, the story of Ms DeBique only really came to light after she had already won her claim.

The amounts once broken down do make for interesting reading and do serve to illustrate how these outlandish figures are produced. The amounts reported include:

- £473,535 for loss of earnings – which must mean that Ms DeBique was not envisioning working any time soon, if ever again.
- £325,160 for loss of benefits such as healthcare and education for her daughter.
- £315,562, for loss of pension rights.
- £18,000 for injury to feelings – following the Vento guidelines this would represent an injury to feelings award at the upper end of the middle-band.
- £10,000 for aggravated damages

In the event the Tribunal awarded a figure of £17,016, which equated to £15,000 injury to feelings and £2,016 in interest on the award.

The Tribunals reluctance to award any loss of earnings stemmed from its belief that Ms DeBique had failed to mitigate her losses and had unreasonably refused the offer of alternative employment offered by the Army. The job offer was an unprecedented move in Army circles, offering Ms DeBique a five-year posting to the Blandford garrison in Dorset. An army barracks, which offers child-care. A suitable posting you may think, the Tribunal would agree with you.

Although the judgment is far more sensible than it could have been if the above figures had been accepted, the fact that figures of this magnitude can be banded around shows how vulnerable employers are to discrimination claims, particularly if the employment package offers attractive benefits like a pension or relative job security.

Race Claim Barrister

The female barrister suing her previous chambers with allegations of race discrimination is to appeal against the Employment Tribunals decision to dismiss her claim. Dr. Bijlani, who was claiming losses of £33million in the event she was successful in her claim, has submitted her appeal to the EAT.

The appeal is on the grounds that the original Tribunal “failed to apply the correct legal test for harassment”, did not in her opinion consider that the “conduct and attitudes” in the clerks room “created a hostile working environment”. Dr. Bijlani also challenges in her appeal the tribunal’s conclusion that the set had not failed to act robustly to tackle race discrimination. The case, as they say, therefore continues. We will keep you informed.

Dr. Bijlani must be a brave person to take on 3 QC’s and the respected employment Counsel John Bowers QC, in lodging her appeal.





And Finally....

With the Equality Act 2010 due to place Equal Opportunities and Diversity at the top of the employment agenda this maybe a good time give your current policies a health check ahead of the act coming into force in October.

If you don't currently have any policies in place then we can also provide you with a comprehensive staff handbook which will be compliant with the new provisions in the Equality Act 2010. Please give us a call and we can provide a quotation.

We hope you like the refreshed and updated version of the newsletter. The scary eye is now a thing of the past, but that doesn't mean we will be taking our eye off the ball. Until next time..

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A Winning Belief

The case of Tim Nicolson, former Head of Sustainability at Grainger plc, raised a few eyebrows last year when, he successfully claimed that his conviction that mankind was heading towards catastrophic climate change was capable of protection as a "philosophical belief" within the meaning of the Employment Equality (Religion or Belief) Regulations 2003.

The EAT decided that his "belief" had all the characteristics necessary to afford it protection. The original Tribunal had found that it did not have the necessary characteristics. It has now been reported in the Daily Telegraph that, although the case did not proceed to a full remedy hearing, an out of court settlement had been reached of approaching £100,000. Clearly a belief worthy of significant financial protection as well.

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