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3HR Legal Weekly

Employment

Consequences of discrimination in the workplace

Under the Equality Act 2010, it is against the law to treat someone less favourably than someone else because of one of the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The rules against discrimination apply during the recruitment stage, as well as during the employment relationship. Discrimination may occur by, for example:

- recruiting a man instead of a woman where the woman's experience is greater
- paying men and women different amounts for work of equal value (including benefits)
- selecting someone for redundancy because they have a protected characteristic
- failing to make reasonable adjustments for a disabled worker
- firing someone for making an allegation of discrimination
- firing someone because they're a union member
- unfairly rejecting a request for flexible working from a new parent

You can also discriminate against someone even if you don't intend to. For example, you can discriminate indirectly by offering working conditions or rules that disadvantage one group of people more than another. This was the situation this year in the case of *Carreras v United First Partners Research* where the disabled employee believed that he was disadvantaged because there was an expectation in his workplace that employees work late, even though there was no strict requirement to do so. In upholding the reasonable adjustments claim, the Employment Appeals Tribunal held that working late does not have to be presented as an instruction to cause a disadvantage. In practice, workplaces can put pressure on employees to conform, even if there is no written rule or direct management instruction.

It is important to be mindful of any disabilities that your employees may have. For example, this year a woman with dyslexia has won a disability discrimination case against her employer, Starbucks. The employee had made mistakes on company documentation due to her difficulties with reading, writing and telling the time and was accused of falsifying the documents. She was given lesser duties at her branch in and told to retrain, which left her feeling suicidal. The Tribunal held that Starbucks had failed to make reasonable adjustments for her disability, and that she had been subject to discrimination because of the impact of her dyslexia. The Tribunal also found that she had been victimised by Starbucks, as it had failed to understand the equality issues in relation to the employee's dyslexia and the effects it had on her work.

When recruiting or conducting redundancies, it is essential to use non-discriminatory criteria. In the 2016 case of *Perrin v Fred Christophers Ltd*, Ms Perrin who was employed as a receptionist at Fred Christophers Ltd ("FC"), was dismissed on grounds of redundancy because a new role had been created for which FC alleged Ms Perrin was not suitable. The tribunal held that Ms Perrin had been directly discriminated against on grounds of her age when she was dismissed. The reasons were: (1) there were no substantial differences between the old and new role; (2) no evidence of under-performance on Ms Perrin's part; and (3) one of the owners made various age-related comments including "don't worry, I'll get rid of her" and he wanted to replace her with a "young, fit blonde".

Compensation for discrimination claims is not subject to any statutory cap, and often such claims are combined with other claims, for example unfair dismissal, which attract their own compensation awards. The Ministry of Justice has published its annual employment tribunal award statistics for the year 1 April 2015 to 31 March 2016 where the highest sum awarded was £1,762,130 in a sex discrimination claim. The average award for sex discrimination was £85,622 and for disability discrimination was £21,729. In addition to compensation awards, employers can find themselves liable for not only their own legal costs, but also many of the claimant's legal costs.

Whenever you are dealing with a case where there is the potential for a discrimination claim, you should seek legal advice as soon as possible to avoid a costly tribunal claim. For advice on avoiding discrimination, please contact the Employment team. We also provide discrimination avoidance training sessions for management.

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