

DISCRIMINATION

Hints and tips:

1. Ensure that employees and decision makers are educated on discrimination laws and requirements and that all of your policies and procedures are up to date;
2. There are codes of practice and guidance for all areas of discrimination. They are very useful, easy to understand and although they are not legally binding employment tribunals are required to take them into account when determining issues in relation to discrimination claims;
3. Bear in mind that sometimes all claimants are really looking for in discrimination cases is an apology- this will be a lot more cost and time effective than having to go to a tribunal;
4. Wherever possible, reasonable adjustments should be made for disabled employees. What is reasonable will depend upon each employees condition and it is therefore imperative to consult closely with both the employee in question and their medical specialists. If you reject a particular request make sure that you can justify your refusal;
5. It is important that you retain medical documentation about an employee's disability. Not only does it confirm that they have a recognised disability, but it also protects you by ensuring you provide the right adjustments;
6. Keep communication between you and the employee open and non-threatening- talking about issues, may avoid unnecessary legal action;
7. Accommodate different religious beliefs and cultures. For example, you should allow time off to pray and for religious holidays unless such refusal can be justified;
8. Under UK law employers are not under an obligation to provide references. However, employers should think before taking this approach in relation to employees that have raised a discrimination issue as it could be seen as victimisation;
9. Keep written records of everything! You never know when you might need to rely on your notes.

Dates for your diary

1. The Equality Bill

The Equality Bill has moved on to its second reading in the House of Commons and is currently being reviewed by a Public Bill Committee. Subject to approval in both the House of Commons and the House of Lords it is likely to receive Royal Assent in Spring 2010.

The main changes are expected to be as follows:

- Harmonisation of the definition of direct discrimination;
- Harmonisation of the definition of indirect discrimination across all protected areas;
- Removal of the requirement for a comparator in victimisation claims;
- Harmonisation of the concept of justification as “a proportionate means of achieving a legitimate aim”;
- Making employers liable (in some situations) for harassment at work by third parties.
- Allowing employers to recruit or employ someone from an under-represented group (in the business) where there are two or more suitable candidates for a job;
- Requiring certain large employers to report on their gender pay gap;
- Enabling tribunals to make recommendations which would benefit the workforce as a whole and not just the claimant;

2. Age discrimination and Heyday

The European Court of Justice has given its judgment on whether regulation 30 of the Employment Equality (Age) Regulations, which allows compulsory retirement at the age of 65, infringes the Equal Framework Directive.

Referred to as the *Heyday* case, the claim is that this regulation not only breaches EC law but also fails to distinguish between direct and indirect discrimination on the grounds of age.

The High Court has yet to reach an outcome on this case and will have to decide whether:

- a) a worker who is aged 65 or over can be fairly dismissed by reason of retirement; and
- b) whether it is lawful not to recruit someone who is or would be within six months of being recruited be 65.

Regardless of the High Court’s ruling the Government is committed to reviewing the retirement age in 2011 in any event so it may well be that the retirement age of 65 is scrapped altogether.

This note does not constitute legal advice and is intended as general guidance only. If you would like further information or would like to arrange a meeting please email hina@partnerslaw.co.uk or call 07809 694400



7a D'arblay Street London W1F 8DF
w: partnerslaw.co.uk