

Employment Updates

Weight Watchers' Leaders are Employees

The Upper Tribunal (Tax and Chancery Chamber) has concluded that leaders conducting Weight Watchers meetings were employees for the purpose of tax and national insurance contributions. WW now face an expensive bill of past contributions for tax and national insurance.

No Protection against Post-Employment Victimisation

An Employment Tribunal has held that, whilst the Equality Act 2010 gives express protection against harassment and discrimination after employment ends, there is no specific provision in regard to victimisation. A claim to the Tribunal for victimisation following a bad reference therefore failed.

Two Year Qualifying Period for Unfair Dismissal

The Government has confirmed that the two year qualifying period for employees wishing to bring an unfair dismissal claim will only apply to those who start new employment on or after 6 April 2012.

Surrogacy and Maternity Leave

An Employment Tribunal has referred to the ECJ a question of whether a woman expecting a baby through a surrogate pregnancy is entitled to maternity leave.

Discrimination Can Seriously Damage Your Wealth

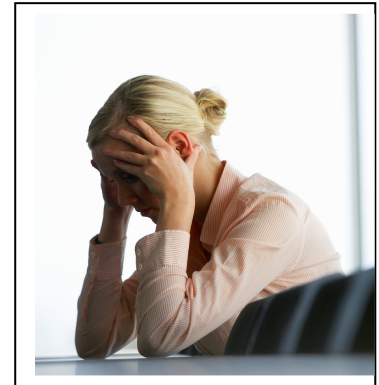
In December 2011, the Employment Tribunal awarded a former NHS doctor the largest ever payout for discrimination amounting to £4.5 million.

This is, of course, an exceptional case but it does serve as a timely reminder that there is no limit on awards for discrimination. In fact, Tribunal statistics for the year ending March 2011 indicate that the average award for successful discrimination claims was around £13,000 with the average award for age discrimination cases being considerably higher at just over £30,000.

It is easy to see why it is so important for employers to ensure that they and their employees do nothing to discriminate against their colleagues, clients, customers or job applicants.

October 2010 saw the introduction of the Equality Act, incorporating all previous discrimination legislation into a single Act. The Act lists nine protected characteristics; sex, sexual orientation, race, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief, and new forms of discrimination, such as discrimination by association.

As well as an obligation on the employer to ensure that discriminatory practices are prevented and eliminated within an organisation, there are other practices which are prevented under the Equality Act. It is no longer acceptable to prevent discussions on rates of pay between employees if the rates could be discriminatory. In addition, the circumstances in which a job applicant can be asked about their health are now limited.



So what can an employer do to prevent discrimination within the organisation? The first step must be to have an up to date Equality Policy, accessible by all staff, which sets out the various methods by which discrimination can occur, what an employee should do if they feel they are being discriminated against and the steps the employer will take to prevent or correct discriminatory practices.

The Policy should also remind staff that they can be personally liable for discriminatory practices and that such practices will not be tolerated and could lead to dismissal.

A Policy should be backed up by effective staff training. Speak to your staff about equality and discrimination; either via a specific training courses or when they begin employment with you.

Managers should be trained in handling sensitive issues such as staff illness. It is useful to bear in mind that, if as an employer, you are ever in the unfortunate position of defending a discrimination claim, clear policies and training records will go some way to convincing the Tribunal that you were taking reasonable steps to prevent such incidents.



Julie Shannon

Julie recently joined us as our employment law specialist. She has several years' experience in representing and assisting companies (both large and small) as well as individual employees.

Julie can assist you with employment documentation, tribunal representation and advice and assistance on employment procedures including disciplinaries, redundancies and TUPE transfers.

Contact Julie at:

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The Many Forms of Discrimination (and when they apply)

DISCRIMINATION	DEFINITION	APPLIES TO
Direct	Less favourable treatment because of a protected characteristic	All protected characteristics
Indirect	Imposition of a condition, criteria or practice that disadvantages a group of people with the protected characteristic and cannot be justified.	Age, race, disability, religion or belief, sex, sexual orientation, marriage or civil partnership, gender reassignment.
Associative	Direct discrimination against a person who associates with someone with a protected characteristic.	Age, race, disability, religion or belief, sex, sexual orientation, gender reassignment.
Perception	Direct discrimination against a person who is thought or perceived to have a protected characteristic even though they do not.	Age, race, disability, religion or belief, sex, sexual orientation, gender reassignment.
Harassment	Unwanted conduct towards a person with a protected characteristic that violates their dignity or creates a hostile environment.	Age, race, disability, religion or belief, sex, sexual orientation, gender reassignment.
Third Party Harassment	Harassment of employees by third parties (eg: customers or clients)	Age, race, disability, religion or belief, sex, sexual orientation, gender reassignment.
Victimisation	Discrimination towards a person who has brought or supported a complaint under the Equality Act.	All protected characteristics.

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