

Appendix 6 - Employment Law Update

Victoria Cook, Principle Employment Adviser at Bates Wells & Braithwaite Solicitors presented an update of recent changes in employment law. Victoria provided a general case law update as well as some important cases in various areas of discrimination and an update on the Equality Act.

A full version of the employment law update notes is available. The following provides information on some of the cases highlighted at the session.

■ General case law update

The cases covered included:

- Shah v First West Yorkshire Limited - that found that a worker who has been prevented by illness from taking holiday, and returns from sick leave with insufficient time to take that holiday within the current leave year, should be given the opportunity to take that leave in the following year
- Bateman and Others v Asda Stores Ltd - An employer could rely on its reserved right to unilaterally vary a contract as stated in an employee handbook but they may still breach the implied term mutual trust and confidence if the reserved right is not used cautiously. Employers should consult, and give employees appropriate notice and consider any financial detriment to employees.
- R (on the application of G) v X School & Others - The right to legal representation in disciplinary hearings will apply where an employee's right to practice a profession is at risk. This is unlikely to apply directly to advice centres as they are not public bodies.
- Royal Mail Group Ltd v Communication Workers Union - TUPE regulations require an employer to provide information to staff of the legal, economic and social implications of which it genuinely believes to be correct but employers are not under a duty to warrant the accuracy of the information.

■ General discrimination update

- Grainger plc and others v Nicholson - an Employment Appeal Tribunal upheld a findings that Mr. Nicholson's belief in man-made climate change and the existence of a moral duty to live in a way that mitigates or avoids it was capable of being a 'philosophical belief' and subject to the protection of the religion or belief regulations.
- Eweida v British Airways PLC - BA had a standard uniform policy that personal jewellery, including any worn for religious reasons should be concealed. The

Court of Appeal has ruled that Ms Eweida was not indirectly discriminated on the ground of her (Christian) religion or belied by British Airways enforcing the code.

- Amnesty International v Ahmed - the applicant was refused a job on the grounds of ethnicity but for good reasons. The Tribunal held that Amnesty had directly discriminated against Miss Ahmed as “but for” her ethnic origins she would have been appointed. It also held that she had been constructively dismissed.
- Awards for Injury to Feelings - Lower Band (for less serious cases) - up to £6,000; Middle Band (for serious cases which do not merit an award in the highest band) from £6,000-£18,000; Higher Band (for the most serious cases) - from £18,000-£30,000.

■ Equality Act

The session also provided an outline of the Equality Act due to come into force in October 2010. The Act will replace and consolidate existing discrimination legislation on the ‘protected characteristics’ of age, disability, gender reassignment, marriage and civil partnership, race (including nationality and ethnic origin), religion, belief, sex and sexual orientation.

The Act applies to employment and the provision of goods and services. It also aims to strengthen the law to support progress in equality. It introduces a public sector duty to have regard to socio-economic equality. It also applies the prohibition of discrimination on the ‘protected characteristics’ to the provision of goods and services; to housing; to education bodies; to associations (members clubs); and the exercise of public functions.