MASSERS

EMPLOYMENT LAW UPDATE

May 2016

Case update: Disability discrimination

In *West v Yorkshire Ambulance Services NHS Trust*, the Tribunal found Y had discriminated against W in withdrawing a job offer after finding out she had a history of previous long-term sickness absence.

W had previously worked as a nurse within the NHS and had left following a period of 18 months on sick leave. Y made a conditional offer of a role as a helpline adviser, which was promptly withdrawn on receipt of a reference from her previous employer and occupational health assessment. The Tribunal found that this act constituted discrimination arising from disability.

On a practical note, it is always advisable for employers to keep detailed written records during the recruitment process in order to evidence that there was not a discriminatory motive for not offering the role to a specific applicant, or indeed subsequently withdrawing an offer. Offers should generally be made as conditional upon receipt of satisfactory references.

Imposing a dress code: Is it legal to insist female employees wear high heels to work?

A worker in a City firm set up a petition this month calling for a ban on forcing female employees to wear high heels at work after she was sent home for failing to do so. The petition will be considered by Parliament and has attracted much media attention. The College of Podiatry has commented on the long-term damage which can be caused by the extensive wear of high heels.

This isn't the first time that a Company's dress code has come under public scrutiny. In February this year, British Airways crew won a battle to allow all cabin crew to wear trousers in circumstances where some female crew had previously been required to wear a skirt unless exempt on medical or religious grounds.

Employers have a discretion when it comes to enforcing a dress code and it is possible to have a different dress code for male and female employees. The reasons behind it must however be "reasonable", non-discriminatory and capable of objective justification.

Trade Union Act

The Trade Union Bill has received Royal Assent although it is not yet known when it will come into force. Some of the key provisions will be:

- Requirement for at least 50% turn out in votes for industrial action in certain public services e.g. the health sector, with an additional threshold of 40% of support for industrial action to be met.
- 6 month time limit for industrial action from the date of the mandate (increased to 9 months with mutual agreement of employer and union).
- Requirement for a clearer description of the trade dispute and planned industrial action to be on the ballot paper.

Case update: Discrimination on grounds of religion or belief

In *Harron v Dorset Police* the Employment Appeal Tribunal held that it is possible that a belief that public service is wasteful of money might be protected as a philosophical belief under the Equality Act 2010.

H worked for Dorset Police and claimed he had been subject to a detriment as a result of his "belief in the proper and efficient use of money in the public sector". The EAT has overturned an earlier decision of the Employment Tribunal that this could not be protected as a philosophical belief, saying that in fact it might be. The case has been remitted to the Tribunal for reconsideration.

The Equality Act prohibits discrimination or less favourable treatment on grounds of religion or belief. In order for a belief to be protected, it must be genuinely held; be a belief rather than an opinion; relate to a weighty and substantial aspect of human behaviour; reach a certain level of cogency, seriousness and importance; and be worthy of respect in a democratic society. For example, a belief in climate change has been held to be capable of constituting a protected belief.

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