DISCRIMINATION (II) DISABILITY DISCRIMINATION, AGE DISCRIMINATION, RELIGIOUS DISCRIMINATION AND SEXUAL ORIENTATION DISCRIMINATION

Preparation:

This seminar covers the disability, religion, sexual orientation and age discrimination regimes in the context of employment. In order to prepare for this seminar you should read from one or two of the textbooks from the general reading listed below. You should then look at and consider the issues that will be discussed. You should read any specific material cited and undertake any specific tasks set.

General Reading:
Davies chapter 7*1
Selwyn chapter 4*
Deakin & Morris pp. 562-573, 574-575 and 654-669*2
Honeyball & Bowers chapter 10*
Pitt, chapter 2*

Advanced Reading:
Neil Addison, Religious Discrimination and Hatred Law (Routledge/Cavendish, 2007) chapters 4 & 6*3
Anna Lawson, Disability and Equality Law in Britain: The Law of Reasonable Adjustments (Hart Publishing, 2008)
Lisa Waddington, “When it is reasonable for Europeans to be confused: Understanding when a Disability Accommodation is “Reasonable” from a comparative perspective” (2008) 29(3) Comparative Labor Law & Policy Journal 317

Advanced Reading:
Nicholas Bamforth, Maleikha Malik and Colm O’Cinneide, Discrimination Law: Theory and Context (London, Sweet & Maxwell, 2008) Chapters 4, 5, 6, 7, 8, 10 and 12*4

1 PLEASE TREAT THIS WITH CAUTION AS IT DOES NOT COVER THE EQUALITY ACT 2010 AND INSTEAD IS A TREATMENT OF THE PRE-EQUALITY ACT LAW!

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**Journal Reading:**


David Hosking, “A High Bar for EU Disability Rights” (2007) 36 ILJ 228*


James Petts, “Prognosis for Disability Discrimination Following McDougall” [2008] ILJ 268


Lisa Waddington, “When it is reasonable for Europeans to be confused: Understanding when a Disability Accommodation is “Reasonable” from a comparative perspective” (2008) 29(3) Comparative Labor Law & Policy Journal 317

Aileen McColgan, “Class wars? Religion and (In)equality in the Workplace” [2009] 38 ILJ 1*

Charles Wynn-Evans, “Age Discrimination and Redundancy” (2009) 38 ILJ 113


Nicholas Hatzis, “Personal Religious Beliefs in the Workplace: How Not to Define Indirect Discrimination” (2011) 74 Modern Law Review 287*

**Question 1:**

Explore the definition of ‘Disability’ in section 6 of, and Schedule 1 to, the Equality Act 2010.

What is ‘associative’ disability discrimination? Is it unlawful under the Equality Act 2010?

If an employer has no knowledge of an employee’s disability, do they have a valid defence to a claim based on the Equality Act 2010?

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5 PLEASE TREAT THIS WITH CAUTION AS IT DOES NOT COVER THE EQUALITY ACT 2010 AND INSTEAD IS A TREATMENT OF THE PRE-EQUALITY ACT LAW!
**Specific Reading:**
David Hosking, “A High Bar for EU Disability Rights” (2007) 36 ILJ 228*
James Petts, “Prognosis for Disability Discrimination Following McDougall” [2008] ILJ 268

Goodwin v Patent Office [1999] IRLR 4*
McNicol v Balfour Beatty Rail Maintenance Ltd. [2002] IRLR 711
Kirton v Tetrosyl Ltd. [2003] IRLR 353
Millar v Inland Revenue Commissioners [2006] IRLR 112*
Taylor v OCS Group Ltd. [2006] IRLR 613
Chacon Navas v Eurest Colectividades SA [2006] IRLR 706*
Smith v Churchills Stairlifts plc [2006] IRLR 41*
Cosgrove v Northern Ireland Ambulance Service [2007] IRLR 397
Paterson v the Commissioner of Police of the Metropolis [2007] IRLR 763
Richmond Adult Community College v McDougall [2008] IRLR 227*
Coleman v Attridge Law [2008] IRLR 722*
Eastern and Coastal Kent PCT v Grey [2009] IRLR 429*
SCA Packaging Ltd. v Boyle [2009] IRLR 746*
Chief Constable of Dumfries & Galloway Constabulary v Adams [2009] IRLR 612
EBR Attridge Law v Coleman (No.2) [2010] IRLR 10*
Secretary of State for Work and Pensions v Alam [2010] IRLR 283*

**Question 2:**
In relation to what must an employer make reasonable adjustments under ss.20-22 of, and Schedules 8 and 9 to, the Equality Act 2010?

Give examples of ‘reasonable adjustments’ - is it ever the case that an employer will be expected to (i) offer a disabled employee the right to fill an existing vacancy, (ii) move a non-disabled employee from a post A to a post B so that a disabled employee can fill post A and/or (iii) ‘create’ a vacancy/new job so that a disabled employee can fill it? Does the duty to make reasonable adjustments amount to positive discrimination in favour of disabled employees?

What is the nature of the test applied by an employment tribunal where they are seeking to determine whether an adjustment made by an employer is reasonable?

In seeking to determine whether a disabled person has suffered a ‘substantial advantage’, with whom must the disabled employee be compared?
**Specific Reading:**
Lisa Waddington, “When it is reasonable for Europeans to be confused: Understanding when a Disability Accommodation is “Reasonable” from a comparative perspective” (2008) 29(3) _Comparative Labor Law & Policy Journal_ 317

**Rideout v TC Group** [1998] IRLR 628
**Beart v HM Prison Service** [2003] IRLR 238
**Mid-Staffordshire General Hospitals NHS Trust v Cambridge** [2003] IRLR 566
**Collins v Royal National Theatre Board Ltd.** [2004] IRLR 395
**Archibald v Fife Council** [2004] IRLR 651*
**Nottinghamshire C. C. v Meikle** [2004] IRLR 703
**Smith v Churchills Stairlifts plc** [2006] IRLR 41*
**Southampton City College v Randall** [2006] IRLR 18*
**Greenhof v Barnsley Metropolitan Council** [2006] IRLR 98
**Tarbuck v Sainsbury’s Supermarkets Ltd.** [2006] IRLR 664
**Project Management Institute v Latif** [2007] IRLR 579
**O’Hanlon v Revenue and Customs Commissioners** [2007] IRLR 404*
**HM Prison Service v Johnson** [2007] IRLR 951
**Environment Agency v Rowan** [2008] IRLR 20*
**Fareham College v Walters** [2009] IRLR 991*
**Eagle Place Services Ltd v Rudd** [2010] IRLR 486
**Chief Constable of South Yorkshire Police v Jelic** [2010] IRLR 744*
**Aylott v Stockton-on-Tees BC** [2010] IRLR 994*

**Question 3:**

**Specific & Advanced Reading:**

**Question 4:**
How do the employment tribunals approach direct disability discrimination in terms of s. 13 of the Equality Act 2010?

**Specific Reading:**
_High Quality Lifestyles Ltd. v Watts_ [2006] IRLR 850
_Stockton on tees Borough Council v Aylott_ [2009] IRLR 533
Question 5:

Explore the regimes under the Equality Act 2010 which apply to religion or belief, sexual orientation and age discrimination. To what extent do these regimes mirror or differ from the sex and race discrimination regimes?


Specific Reading:
Neil Addison, Religious Discrimination and Hatred Law (Routledge/Cavendish, 2007) chapters 4 & 6
Aileen McColgan, “Class wars? Religion and (In)equality in the Workplace” [2009] 38 ILJ 1*
Charles Wynn-Evans, “Age Discrimination and Redundancy” (2009) 38 ILJ 113
Nicholas Hatzis, “Personal Religious Beliefs in the Workplace: How Not to Define Indirect Discrimination” (2011) 74 Modern Law Review 287*

Age
Mangold v Helm [2006] IRLR 143*
Felix Palacios de la Villa v Cortefiel Servicios SA [2007] IRLR 989*
R (on the application of the Incorporated Trustees of the National Council on Ageing (Age Concern England)) v Secretary of State for Business, Enterprise and Regulatory Reform [2009] IRLR 373*
Bartsch v Bosch [2009] 1 CMLR 163
Rolls-Royce v Unite the Union [2009] IRLR 576
R (on the application of Age UK) v Secretary of State for Business, Innovation & Skills [2009] IRLR 1017
Seldon v Clarkson, Wright & Jakes [2010] IRLR 865*
Wolf [2010] IRLR 244
Petersen [2010] IRLR 254
Küçükdeveci v Swedex GmbH & Co KG [2010] IRLR 346
Homer v Chief Constable of West Yorkshire Police [2010] IRLR 619
Rosenbladt v Oellerking [2011] IRLR 51

6 PLEASE TREAT THIS WITH CAUTION AS IT DOES NOT COVER THE EQUALITY ACT 2010 AND INSTEAD IS A TREATMENT OF THE PRE-EQUALITY ACT LAW!
Religion
Copsey v VWB Devon Clays Ltd. [2005] IRLR 811
Glasgow City Council v McNab [2007] IRLR 476
Azmi v Kirklees Metropolitan Borough Council [2007] IRLR 484*
Saini v All Saints Haque Centre [2009] IRLR 74
McConkey v The Simon Community [2009] IRLR 757* (Religion/Political Beliefs)
Grainger plc v Nicholson [2010] IRLR 4
McFarlane v Relate Avon Ltd [2010] IRLR 872
Ladele v London Borough of Islington [2010] IRLR 211
Eweida v British Airways plc [2010] IRLR 322

Sexual Orientation
R (Amicus – MSF Section) v Secretary of State for Trade and Industry [2004] IRLR 430*
English v Thomas Sanderson [2009] IRLR 206*
H M Land Registry v Grant [2010] IRLR 583

Question 6:
Assess how the coming into force of the Equality Act 2010 has changed/will change the landscape of anti-discrimination law in the workplace – make a note of the main reforms. In your opinion, are the provisions in the Equality Act 2010 sufficiently robust?

Specific Reading:
Question 1
Explore the definition of ‘Disability’ in section 6 of, and Schedule 1 to, the Equality Act 2010.

6 Disability
(1) A person (P) has a disability if—
   (a) P has a physical or mental impairment, and
   (b) the impairment has a substantial and long-term adverse effect on P’s ability to
       carry out normal day-to-day activities.

(2) A reference to a disabled person is a reference to a person who has a disability.

(3) In relation to the protected characteristic of disability—
   (a) a reference to a person who has a particular protected characteristic is a reference
       to a person who has a particular disability;
   (b) a reference to persons who share a protected characteristic is a reference to
       persons who have the same disability.

(6) Schedule 1 (disability: supplementary provision) has effect.
(gives guidance)

   Physical OR mental impairment
   e.g. blind epilepsy
deaf bi-polar

Stress ≠ medical condition
BUT
anxiety, dyslexia, depression are
diabetes (night working issue)

WIDE definition

What is ‘associative’ disability discrimination? Is it unlawful under the Equality Act 2010?

Associative Discrimination s.13(1)
(the same applies for the wording in s.19 as to indirect discrimination)