



briefing

Employment, Pensions and Benefits - June 2009

Religious belief

"Everyone has the right to freedom of thought, conscience and religion"

This is the well-established principle set out in Article 9 of the European Convention on Human Rights. Article 9 goes on to provide that the right includes the right to manifest one's religion or belief in worship, teaching, practice or observance. None of this would appear to be particularly controversial but in practice, the issue of religious belief raises many challenging issues in the workplace.

The Employment Equality (Religion or Belief) Regulations 2003 came into force in December 2003 and prohibit direct and indirect discrimination, victimisation or harassment on the grounds of religion or belief. "Religion" means any religion and includes those widely recognised in the UK such as Christianity, Islam, Hinduism, Judaism and Sikhism. "Belief" means any religious or philosophical belief. Interestingly, in April 2007, the Regulations were amended to include a lack of religion or belief so that non-believers have the same protection as believers.

At the time the Regulations were introduced it was anticipated that they would open the floodgates, contributing to the ever increasing rise in the number of Employment Tribunal claims. The reality is very different however. Every year, the Employment Tribunal Service publishes annual statistics for the different types of claims brought. In 2006/2007 there were 638 claims based on religion or belief discrimination which increased to 709 claims in 2007/2008. These are very low figures when compared to the 26,907 sex discrimination claims brought in 2007/2008 and the 5,833 disability discrimination claims. In addition, last year's average award of compensation of £3,203 for religion or belief discrimination was the lowest compensation of all the different types of discrimination claims.

On the face of it therefore, the risk of a claim for religion or belief discrimination is low (when compared to other types of discrimination) and any award of compensation is likely to be modest. Even so, when issues relating to religion or belief arise in the workplace they often generate a huge amount of media interest and on occasions, some controversy. Just in the last few months, the newspapers have reported on a number of such employment disputes, many of which, coincidentally, have involved the health sector.

In one case, a community nurse who carried out home visits to sick and elderly patients was suspended without pay after offering to pray for an elderly patient's recovery. The Nursing Midwifery Council Code states that an individual "[must demonstrate a personal and professional commitment to equality and diversity](#)" and professional status should not be used to promote causes that are not related to health. Following an investigation, the nurse was permitted to return to her post.

In another case, a bank staff nurse taking part in a training exercise in palliative care was dismissed for raising inappropriate issues during the training session: he advised two people involved in a role play to turn to God.

Another recent case resulted in disciplinary proceedings against the individual for wearing a crucifix at work in breach of an NHS Trust's uniform policy. This case was similar to the high profile case of [Eweida v British Airways Plc](#) (2008). Ms Eweida was a member of the check-in staff and wore a plain silver cross which was visible over her uniform as a personal expression of her religion. This contravened BA's uniform policy which did not allow non-uniform items to be worn visibly save for the exception for mandatory religious items such as a Sikh's turban which could not be concealed. Ms Eweida was unsuccessful both in her Employment Tribunal claim and in her appeal to the Employment Appeal Tribunal (EAT) which held that the uniform policy did not create a barrier which put Christians at a particular disadvantage. Further, wearing the cross was a personal decision by Ms Eweida and it was not a requirement of the Christian faith to wear such an item.

It was reported that a campaign supporting Ms Eweida was backed by almost 100 MPs and 14 Bishops and even though BA was successful in defending the claim it did subsequently change its uniform policy allowing crosses to be worn.

Relatively few cases relating to religious discrimination have reached EAT level but the 2009 case of [Chondol v Liverpool City Council](#) illustrates that the key issue to determine is the reason for the treatment that is being complained about. Mr Chondol, a committed Christian, was a social worker and was seconded to the Mersey Care NHS Trust as part of the Community Mental Health Team. There were concerns that he failed to recognise the need for professional boundaries in that he had given the Bible to a service user and had attempted to promote his religious beliefs to different service users. He was disciplined for gross professional misconduct in failing to follow a reasonable management instruction not to overtly promote his religious beliefs. The EAT upheld the Employment Tribunal's decision that Mr Chondol was not discriminated against on the grounds of his religion but because of the Council's view that he was improperly foisting his religion on its service users. It held that the Council would have taken the same action and reached the same conclusion regardless of what religion or view was being promoted.

What about the clash of rights between religion or belief and sexual orientation? Regulations preventing discrimination on the grounds of sexual orientation were also introduced in December 2003 but there are some religions that hold strong views that homosexuality is sinful. This was considered in [London Borough of Islington v Ladele](#) (2008). Ms Ladele, a Christian, worked as a Registrar and took exception to conducting civil partnership ceremonies believing them to be contrary to God's law. She initially avoided carrying out these duties by changing her rota with other members of staff but the lesbian and gay members of staff were dissatisfied with that approach and made a written complaint to their line manager. The dispute culminated in disciplinary proceedings being brought against Ms. Ladele who was eventually dismissed. The Employment Tribunal held that the Council had discriminated against Ms Ladele on the grounds of her religion or belief but the Council successfully appealed to the EAT. The Council had an equality and diversity policy and an objective of providing non-discriminatory services to all the community. Allowing a Registrar not to carry out certain duties for discriminatory reasons would undermine that objective. The reason for Ms Ladele's dismissal was her refusal to carry out a legitimate duty and not because of her religious beliefs. It has been reported that Ms. Ladele may be appealing this decision.

Finally, it is worth mentioning the March 2009 decision of R (on the application of [G v The Governors of X School](#)) which dealt with the right to be accompanied at disciplinary or grievance hearings, a key element of a fair procedure. Workers have the statutory right to be accompanied by a colleague, a trade union representative or an official employed by a trade union. The right does not extend to legal representation.

G worked as a music assistant and was suspended pending investigation into allegations he had behaved inappropriately towards a pupil. If upheld, the Secretary of State could prohibit G from working in schools on the grounds he was an unsuitable person for such work. G's solicitors asked to accompany him at the disciplinary hearing because the potential repercussions of an adverse finding against him "[could result in a life time disadvantage for our client.](#)" The school refused and G was subsequently dismissed for gross misconduct. G then asked to be accompanied by his solicitors at the appeal hearing. Again the school refused. G made an application for judicial review arguing the refusal to allow him legal representation was a breach of his right to a fair trial under Article 6 of the Human Rights Act 1998. The High Court held that because of the serious nature of the allegations and the severity of the consequences, that is G not being able to work in his chosen field, he had the right to legal representation because representation by a colleague or trade union official was insufficient. It is important to remember however that only certain public bodies can be subject to judicial review and G could only rely on the Act directly because the school was a public authority.

More information

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