

## EMPLOYMENT – DISCRIMINATION

Treating one group differently than another group. This is established in various Acts, which govern this area, which protect these discriminated groups. The **Equality Act 2010** unifies various types of discrimination. 6 main protected characteristics. 4 types of prohibited conduct.

### General principles:

- \*No qualifying service
- \*Workers can claim
- \*3 Month limit, but this is not an absolute
- \*This can happen pre and post employment
- \*Unlimited compensation
- \*Vicarious liability
- \*Motive is irrelevant

### PROTECTED CHARACTERISTICS

**AGE** –s5. An age, an age range.

**RACE** –s9. Colour, nationality, ethnic/national origin.

**RELIGION/BELIEF** – s10 – religious belief, philosophical belief, lack of belief

**SEX** –s11 – men/women

**SEXUAL ORIENTATION** –s12 – same sex, opposite sex, both sexes.

**DISABLED** –s6(1) 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.

\*Impairment – *Power v Panasonic UK Ltd* – Becoming depressed, will still be an impairment, regardless if it is self-induced through alcohol – how impairment is caused is irrelevant.

\*substantial – more than minor/trivial.

\*long term – last/likely to last 12 months or for the rest of their life.

\**SCA Packaging v Boyle* – ‘likely’ = ‘could well happen’ rather than ‘more likely than not’

### CLAIMS PROCEDURE

\*Try to resolve the dispute internally following the ACAS Code on disciplinary and grievance procedures.

\*Claim in ET

\*Within 3 months of act complained of.

**EVIDENTIAL ISSUES** – if above does not work, then move to evidential issues.

\*Standard of Proof – civil standard ‘on balance of probabilities’

\*Burden of proof - On the claimant to give primary facts. Then respondent to provide adequate explanation.

\*Employer's explanation

\*Comparators and statistics used in ET

\*Other acts

\*EO policy – these things should not happen

\*Questionnaire – send this to the company for explanation

\*Remarks/prejudice and witnesses

\*Medical evidence for disability in particular

### REMEDIES

\*Recommendation

\*Declaration – company admitting they have done wrong.

\*Compensation – loss of earnings, injury to feelings, psychiatric damage, aggravated damages (company prolonged the situation by not dealing with the problem)

\*Injury to feelings – *Vento* case guidelines (*Da'Bell v NSPCC* affirmed the guidelines, taking into account inflation: minor cases: £500-£6k, more serious: £6k-£18k, most serious: £18k-£30k.

### DIRECT DISCRIMINATION

\*s13 EA 2010 direct – less favourable treatment (needs to be a comparator), because of (establishing casual link, which can be difficult) protected characteristic (which one?)

\**Noon v North West Health Authority (1988)* – Dr had superior qualifications/experience. Held that there was discrim as she was more qualified and suited that the person hired.

\*Direct discrim also covers the perception of particular group or association discrim or person's characteristic, such as with sexual orientation, but this can be applied to other protected characteristics.

\*Defences – no defence to direct discrim, except for age.

\*BUT direct discrim permitted if can show occupational requirement eg casting for acting jobs, refuge for female victim's of domestic violence.

\*This idea of occupational requirement has been misapplied - *Etam Plc v Rowan* – amounted to direct discrim as felt it was necessary to have only females working in the shop.

### VICTIMISATION

\*s27 EA 10 – can be victimized to assert any of the protected characteristics. P has suffered a detriment because they have done/intend to protected act (how is it protected if bad faith). The detriment does not have to be final.

\* There is no need for a comparator. *Nagarajan v LRT*. They need to be no motive for of victimisation to amount to victimization claims. Claimant just needs to establish they suffered a detriment.

### FAILURE TO MAKE REASONABLE ADJUSTMENTS

\*Once disability is established – s20 EA 10 – employer has a duty to make reasonable adjustment.

\*They need to take steps to ensure employee can work in that particular environment. The steps they have to do depends on the extent of the disability. Provision, criteria and practice (PCP) in place/physical feature/ lack of auxiliary aid; substantial disadvantage; such steps as is reasonable; to avoid disadvantage/provide auxiliary aid.

\*No defence if there is a failure to make reasonable adjustment.

\*BUT defence if don't know/could not reasonably be expected to know P is disabled.

*R v Birmingham CC ex p E.O.C*

*James v Eastleigh BC*

*R (on the application of E) v JFS Governing Body*

*Shamoon v RUC*

*Coleman v Attridge Law*

*Wilson v TB Steelworks*

*Tottenham Green under 5s v Marshall*

*St Helens MBC v Derbyshire*

*Lincoln Police v Weaver*

*O'Hanlon v HMRC*

*Kenny v Hampshire*

*Garrett v Lidl*

*Chief Constable of S Yorks v Jellic*

### INDIRECT DISCRIMINATION – s19

\*s19 EA 10 – PCP (applied to all), disadvantages group (statistics), disadvantages claimant, EYR cannot justify (proportionate means of achieving legitimate aim).

\**Mandla v Dowell Lee CF with Panesar v Nestle*

\**London Underground v Edwards (No 2)*

\**British Airways v Stamer* (female pilot wanting to reduce working hrs for childcare = indirect discrimination, as predominantly women who have childcare issues and want to work part-time basis)

### HARASSMENT

\*s26 EA 10 – unwanted conduct (obvious risk or victim made clear – subject and objective element), re protected characteristic, purpose or effect (jokes?), violating dignity/intimidating environment (objective/subjective?)

\*Harassment is now a stand-alone claim - *Strathclyde Regional Council v Porcelli (1986)* – s26(2) and (3) EA 10. See also: *Insitu Cleaning Co v Heads/ Moonsar v Five Ways Express Transport*

\*It covers the perception of particular group or association discrim or person's characteristic, such as with sexual orientation, but this can be applied to other protected characteristics. *English v Thomas Sanderson Blinds*.

\**Reed and another v Stedman*

\**Jones v Tower Boot*

\**Richmond Pharmacology v Dhaliwal*

**DEFENCES?** Vicarious liability (s109 EA 10) BUT defence if all reasonable steps. Addressed in s109 EA 10.

### COMMERCIAL AND PRACTICAL CONSIDERATIONS