



HR Briefing

APRIL 2010

EMPLOYMENT LAW UPDATE – RELIGION AND BELIEF IN THE WORKPLACE

Key recommendations

This month we take a look at the recent decisions in relation to religious discrimination and the implications of these rulings including the impending and unprecedented showdown between the Church of England and the judiciary.

Following a series of cases in which Christians have lost their jobs after seeking to express their faith, various senior figures in the Church of England are seeking an intervention in the way the judiciary operates in relation to cases of religious discrimination.

Shirley Chapman – Royal Devon and Exeter NHS Trust Hospital

Shirley Chapman is a Christian nurse who refused to remove her crucifix necklace at work and as a result of this she was moved to a desk job. Following this treatment, Shirley Chapman brought a discrimination claim against the trust saying that it would violate her faith to remove the crucifix.

The trust however said the decision to move her to a desk job was due to health and safety concerns about patients trying to grab necklaces, not because the necklace included a Christian symbol.

Shirley Chapman also allegedly submitted a request to pin the crucifix on the outside of her uniform as a compromise but this was said to have been rejected by the trust.

The tribunal ruled in favour of the trust stating that it was not a requirement of the Christian faith to wear a crucifix.

This case followed that of Nadia Eweida, a Christian British Airways worker, who also lost her discrimination case when she refused to remove her crucifix at work.

Although the tribunal found in the employer's favour, this case clearly shows that employers are failing to exercise proper caution when implementing and enforcing dress codes at work.

Jennie Cain – Devon County Council

Jennie Cain, a school receptionist at Landscore Primary School, claimed that her daughter had been reprimanded for talking to another pupil about Jesus, Heaven and God. Jennie Cain wrote an email she claimed to be sent privately to 10 close friends from her church to ask for prayers for her daughter and the school.

The email however was passed to the headmaster. Jennie Cain was told that she would be investigated for professional misconduct and following the investigation the internal panel found her guilty of serious misconduct.

Jennie Cain claimed her employer was guilty of religious discrimination and the case has now reached an out of court settlement. (This case also illustrates the power of emails and the Internet. Once something is on the system, you can never be 100% sure where it will end up!)

Other recent and notable cases

Ladele v London Borough of Islington: The tribunal found that Lillian Ladele, a registrar,

- Employers should be able to justify their policies on dress code and show that the need to insist on a strict compliance with the dress code outweighs any adverse impact on a particular faith.
- Dress code policies should be broad and flexible.
- Employers should be aware that a significant number of religious followers consider dressing in a particular way or displaying certain symbols to be either a mandatory requirement of their faith or of exceptional importance.
- Items worn as personal preference rather than a religious symbol are not protected under current discrimination law.
- If changes in dress codes

had been lawfully dismissed for refusing to conduct civil partnerships ceremonies because they were against her Christian beliefs.

McFarlane v Relate Avon Ltd: Gary McFarlane, a Christian relationship counselor, was found to have been lawfully dismissed for refusing to provide psychosexual counselling to homosexual couples.

Caroline Petrie: Caroline was suspended from work as a nurse for offering to pray for a patient.

Olive Jones: Olive, a Christian teacher, was dismissed from her job within hours of offering to pray for a sick pupil during a home mentoring visit.

Church of England challenge

As a result of the above cases, senior figures in the Church of England are seeking to intervene with the judiciary in relation to allegations that some senior judges are prejudiced against Christianity.

They are urging senior judges to stand down from future religious discrimination hearings because of what they describe as “dangerous” rulings and are stressing that it is vital that this matter is addressed and given a central platform to ensure religious liberties are not undermined.

Implications

It will be important to monitor the outcome of the intervention by the Church and any future case law in the area of discrimination on the grounds of religion or belief as this will impact upon the requirements of employers to manage different religious beliefs with their working practices.

What is already clear from the recent series of cases is that employers need to carefully consider their practices and in particular policies on dress codes, which may adversely affect employees of a particular faith in order to limit the risk of successful claims for religion/belief discrimination. The cases demonstrate, however, that a distinction can be drawn between mandatory requirements of the faith and those which are “desirable” only.

REMINDER! : Hot Breakfast Briefing

A review of some of the key decisions and changes in legislation and hot legal issues currently facing employers

To book your place on this free breakfast seminar to be held at The Bridgewater Hall on 26 May 2010, please RSVP to Geri Taylor – gerit@berg.co.uk

If you have any queries on any of the above please contact **Alison Loveday** at alisonl@berg.co.uk to discuss further issues. Alternatively you contact **Alison** on **0161 833 9211**.

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need to be made they should be clear and employers should consult with different groups on issues such as a religious wear.

- Dress codes should be applied consistently throughout the workplace and the objectives of the codes should be carefully considered.
- Work policies and practices be may found to be discriminatory if enough people feel discriminated against.
- For a finding of indirect discrimination it is necessary to show that a group of people are disadvantaged by the policy, rather than just one individual