



# Human Resources email shot

*In this email shot we look at three issues, flexible working, race discrimination and the new Civil Partnership Act.*

**Flexible Working:** An employment tribunal has recently held that an employer indirectly discriminated against a part-time female employee by requiring her to work a minimum of 25 hours in the office. Ms Giles had a young child and, despite Ms Giles presenting her employer with a number of potential flexible working arrangements, her employer insisted on a minimum of 25 hours per week being worked in the office. Ms Giles resigned when her employer failed to respond to the alternative proposals. The tribunal upheld Ms Giles' claim for indirect discrimination on the grounds of sex. The tribunal also penalised her employer for failing to following the statutory grievance procedure.

**Action required:** Should an employee with responsibility for a child under the age of 6 present you with a flexible working request, you are under a duty to seriously consider the request. Within 28 days you should arrange a meeting with the employee and should notify the employee of your decision within a further 14 days. If your company does not agree to home-working, you must be able to demonstrate a real need for office-based working, and must also be prepared to suggest alternative solutions and/or consider a trial period. It is important that the statutory grievance procedure is followed, failure to do so could result in any compensation awarded by a Tribunal being increased by as much as 50%.

**Race discrimination:** The Employment Appeal Tribunal (EAT) recently held that a BNP activist was entitled to rely on the race discrimination legislation. Mr Redfearn was found to be a "perfectly satisfactory employee" but was dismissed when his employer discovered he had been elected as a local authority councillor representing the BNP. The EAT held that the expression "on racial grounds" should be given a broad meaning to include a decision to dismiss which was significantly influenced by questions of race. The employer's motive behind the decision was irrelevant. The case has been remitted for further consideration.

**Action required:** This decision appears to allow discrimination on grounds of political belief "in through the backdoor", thus giving redress for those members of political parties who suffer less favourable treatment as a result of their political views. Employers should review staff handbooks/contracts of employment to ensure that there are policies and procedures in place to prevent discrimination from occurring, as there is no limit on the compensation awarded in such cases by the Tribunal. It is important that discrimination issues are also covered on induction and during on-going staff training.

**Employment Legislation to be amended under the Civil Partnership Act:** The Civil Partnership Act is due to come into force on 5 December 2005, enabling same-sex couples to form a civil partnership by registering as civil partners. The Act makes provision for civil partners to be treated in the same or similar way as spouses in relation to certain benefits and obligations, including many related to employment. One particular amendment is to the effect that protection from discrimination on the ground that a person is married will be extended to those having concluded a civil partnership.

**Action required:** You should consider your existing policies to assess their effect on same-sex couples, who must be treated in the same or similar way as spouses. Appropriate information to staff, and training should be given. Action should be taken now to ensure that any changes can be effected before the new Act comes into force.

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To discuss how Berg Legal can assist you with these issues, please contact Alison Loveday at [alisonl@berg.co.uk](mailto:alisonl@berg.co.uk), our partner in our Human Resources Department. Alternatively you can call Alison on 0161 833 9211.

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