



Employment alert

ECJ gives new protection for carers

You may have read reports, [including this one from the BBC](#), that the European Court of Justice ('ECJ') has handed down a judgment which gives discrimination protection to the carers of disabled people.

In *Coleman v Attridge Law*, a secretary sued her law firm (that's right – lawyers are not immune to employment claims) after it allegedly treated her badly because of her caring commitments. Her disabled son, Oliver, has respiratory problems. She claims that her employer put certain absences down to laziness, for example, when she says she was taking care of Oliver.

This was to many lawyers a surprising decision. The 1995 Disability Discrimination Act protects a disabled person against discrimination "on the ground of the disabled person's disability" (not on the ground of anyone else's disability).

Then, in 2000, came an European directive banning discrimination "on the grounds of" disability, sex, race etc. Clearly this is wider than "on the ground of the disabled person's disability". The UK failed to change the Act to reflect this new directive, so the wider European definition did not bind the law firm. However, it binds the UK (including employment tribunals) and so Mrs Coleman successfully argued that the tribunal should extend the words

"on the ground of the disabled person's disability"

to mean

"on the ground of the disabled person's **and all people associated with a disabled person's disability**".

The legal jargon for this extension is "associative discrimination".

What does this mean for employers?

Carers of disabled people already have employment rights. They are entitled to reasonable amounts of unpaid time off to deal with emergencies involving their dependants. Also, employees with over 26 weeks' service may make one flexible working request per year to alter their working pattern to care for a child under six, or a disabled child under 18 or a disabled adult family member.

This case means that employees also have wider rights, which are not limited by legislation, such as the right:

- Not to be harassed about their role as a carer (this includes bullying, teasing and making them feel uncomfortable)
- Not to be treated less favourably in relation to their caring responsibilities
- Not to suffer a detriment because they have complained about your attitude to their caring role.

Also, the same principle is likely to be extended in future to other areas of discrimination, such as sex, age and religion. We can envisage "associative discrimination" claims from employees who are:

- Fed up with comments about their wife's breasts or husband's bottom
- Teased about their relationship with an older/younger partner
- Forced to work on a day when they take someone to a place of worship.

Practically speaking, good employers are unlikely to have to make changes to their practices or policies.

One area where you may wish to take advice is with flexible working requests in which the employee mentions caring for a disabled person. This new development may have made an inroad into the reasons for which an employer may refuse flexible working requests, which are currently:

- Cost
- Customer demand
- Inability to re-distribute the work or recruit other staff to do it
- Impact on quality control or performance
- Lack of work during the proposed shifts
- A planned restructuring.

Until this decision it was enough that the employer believed one of these reasons applied. However it may now be the case that an employee can argue that the reason has to be justifiable otherwise it is disability-related discrimination or indirect sex discrimination.

If you are in doubt about discrimination issues or flexible working requests or if you receive a grievance about these matters you should take legal advice.



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