



# ASSOCIATIVE DISCRIMINATION

This morning the EAT has given judgment in the case of *Attridge Law v Coleman*. Following the Advocate General's opinion given on 31 January 2008, the ECJ held in July 2008 that the Equal Treatment Framework Directive (the "Directive") is intended to prohibit associative discrimination in the context of direct discrimination and harassment. The Directive is implemented into UK law by the Disability Discrimination Act 1995 (the "DDA").

Ms Coleman brought a claim under the DDA alleging that she was directly discriminated against and harassed by her former employer on grounds of the disability of her son, for whom she is the primary carer. The EAT has today held that the DDA can be read purposively, so as to conform with the intent of the Directive, to find that Ms Coleman was directly discriminated against and harassed on the grounds of the characteristics of another person i.e. the disability of her son.

In the judgment Underhill P added a new s.3A(5A) to the DDA:

3A(5A) A person also discriminates against a person if he treats him less favourably than he treats or would treat another person by reason of the disability of another person.

Also, a new sub-section (3) to s. 3B:

(3) A person also subjects a person (A) to harassment where, for a reason which relates to the disability of another person (B), he engages in unwanted conduct which has the purpose or effect of—

- violating A's dignity, or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

Sub-section (2) applies to this sub-section, save that the relevant perception is that of A.

**“Ms Coleman was discriminated against on the grounds of the characteristics of another person”**

The Directive applies to age, sexual orientation, religion and belief, as well as disability. Following the EAT's decision, Tribunals are likely to give a similarly purposive approach to the relevant legislation such that direct discrimination by association in those contexts will also be prohibited. These interpretations may soon be given legislative effect because the new general definition of discrimination included in the Equality Bill protects employees who are directly discriminated against, not

because of their own characteristics, but because of those of a person with whom they are associated.

Action Points for Employers

Review equal opportunity policies to ensure they cover associative discrimination.

Consider requests for flexible working under the reasonable adjustments provisions of the DDA if the request is made by a carer of a disabled person.

**This bulletin summarises complicated issues and should not be relied upon in relation to specific matters. You are advised to take legal advice on particular problems and we will be happy to assist.**

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