

14 May 2009

earwiggin : employment law update

DISCRIMINATION ON THE GROUNDS OF RELIGION OR BELIEF

Nicholson v Grainger Plc & Ors

Anyone who is familiar with employment tribunals will know that they have a habit of reaching decisions which can make you question your sanity. This is one such decision.

Mr Nicholson was employed by Grainger Plc as its Head of Sustainability. After he was made redundant he brought various claims including a claim under the Employment Equality (Religion or Belief) Regulations 2003 that he had been discriminated against due to his strongly held views on climate change and the environment. Unsurprisingly, the employer argued that this did not amount to a "religious or other philosophical belief" for the purposes of the regulations.

In a decision which many will find a little surprising, the employment tribunal rejected the employer's argument that Mr Nicholson's beliefs were not covered by the legislation. It found that his views on climate change did amount to a philosophical belief within the meaning of the regulations on the basis that they gave rise to a moral order similar to most religions. His views went beyond "mere opinion" because they affected many aspects of his life such as his choice of home, how he travels and what he eats. It therefore allowed his claim to proceed to a full hearing to determine whether he had been treated less favourably because of his beliefs.

This decision is a little difficult to reconcile with previous cases where it was found that the regulations do not apply to discrimination on the grounds of political beliefs. Grainger Plc has already indicated that it intends to appeal and it will not be any great surprise if the decision gets overturned by the EAT. However, if the decision is upheld on appeal, it could open the door to employees arguing that the discrimination legislation covers a wide range of people who hold beliefs which are not similar to religious beliefs (which could potentially include anyone from vegetarians and vegans to anti-capitalists and anarchists!).

COST ORDERS IN TRIBUNALS

Daleside Nursing Home Limited v Mathew

The normal rule in tribunal cases is that each party is responsible for its own costs regardless of the outcome of the claim. However, a tribunal has the power to make a costs order against a party who has acted "*vexatiously, abusively or otherwise unreasonably*" or if the tribunal considers that the bringing or conducting of the case has been "*misconceived*". In practice, the power to award costs is rarely exercised. However, in a case reported last week, the EAT has suggested that a tribunal should normally award costs if it finds that the claimant's central allegation is a lie.

Mrs Mathew brought a race discrimination claim against her former employer alleging that her manager had subjected her to explicit and offensive racial abuse. The tribunal found that, if the abuse had actually taken place, Mrs Mathew would not have waited nearly three weeks before raising it (when she was faced with possible disciplinary proceedings). However, despite its conclusion that Mrs Mathew had invented the allegations, it declined to make a costs order against her. The employer appealed against this part of the decision.

The EAT upheld the employer's appeal. It found that, where there is a clear-cut finding that the claimant's central allegation was a lie, it would be perverse for the tribunal to

conclude that the claimant had not acted "*unreasonably*" for the purpose of the rules relating to cost orders.

Whether this decision will deter dishonest claimants from pursuing claims based on false allegations remains to be seen. However, it will hopefully make tribunals more willing to make cost orders where it finds that the claimant has acted dishonestly.

WORKING TIME DIRECTIVE

Opt-out from 48 hour limit to be retained

Much to the relief of many UK employers, the negotiations between the European Council and the European Parliament on a revised Working Time Directive failed to result in an agreement. The main stumbling block was the European Parliament's wish to abolish the current right for workers to opt-out of the 48 hour limit on average weekly hours.

It remains to be seen whether the European Commission will make any further attempts to reform the Working Time Directive. In the meantime, the current Directive will remain in place including the right to opt-out of the 48 hour limit.

NATIONAL MINIMUM WAGE

New rates announced

The Government has recently announced the new National Minimum Wage hourly rates that will apply from October 2009. The current and new rates are as follows:

Age of worker	Current Rate	Rate from Oct 09
22 and over	£5.73	£5.80
18-21	£4.77	£4.83
16-17	£3.53	£3.57

The Government has also announced that the adult rate will be extended to 21 year olds from October 2010.

earwiggin is a fortnightly bulletin produced by Wiggin's employment law team. It is intended to provide general guidance only and should not be relied upon as a source of definitive legal or other advice.

If you would like further information on anything reported above please contact [Marcus Rowland](#) (01242) 631224, [Anne-Marie Boyle](#) (01242) 631220 or [Chris Hammond](#) (01242) 631282.

If you want to be removed from the distribution list or wish to be added to it please send an email to this address: [employment](#)

For further information about what we do and who we are please visit our website: www.wiggin.co.uk