
Discrimination on the ground of marital status - for better and for worse

The issue

Discrimination because of marital status of those termed in employment ("employees"), which includes workers for these purposes, can result in an Employment Tribunal claim (previously under the Sex Discrimination Act 1975 ("SDA") and now under the Equality Act 2010 which terms marriage/civil partnership a protected characteristic).

A recent Employment Appeal Tribunal ("EAT") case has decided that this marital status protection covers discrimination also on the ground that the employee is married to a specific individual.

The consequences

In this EAT case, a husband and wife were both employed by the same business and had each raised grievances about separate matters. Adverse references to her husband, which had no direct connection to the wife's grievance issues, were made by the Chief Executive during the management of the wife's grievance suggesting that he believed she was colluding with her husband to protect their own position and to undermine his. These remarks were capable of founding a claim against the business that the wife had been treated less favourably because she was married to her husband and so suffered unlawful discrimination on the ground of her marital status.

This makes available a claim where the compensation is uncapped and applies also to those in a civil partnership.

The solution

Businesses should be alert to the added discrimination claim risk of:

- treating a married employee as an adjunct to their spouse; instead it must base its decisions on each employee's individual conduct or position
- and any less favourable treatment of an employee married to a person with whom the business is in a commercial dispute

Employment Group

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