



RAWORTHS EMPLOYMENT NEWSLETTER June 2005

Bullying at Work – Now a separate cause of action

In the case of *Majrowski-v-Guy & St Thomas' NHS Trust*, the Court of Appeal found that an employer can be vicariously liable (under the Protection from Harassment Act 1997) for one employee bullying/harassing another. This is a 'stand alone' claim and doesn't have to be linked to any form of discrimination or personal injury, thus creating a new cause of action against employers.

All the victim has to show is that the harassment took place and that it was unreasonable.

Whilst the Judges accepted that this was not the original intention of the Act, they saw no reason why it could not apply to employment situations.

Sexual Orientation Discrimination – First successful claim

Mr Whitfield was a senior manager of a private company and also gay. His senior work colleagues made jokes about the fact that he was gay. He succeeded in his claim in the Employment Tribunal and was awarded over £30,000 in compensation.

The key warning for employers in relation to this case and the separate cause of action detailed above, is to make sure your bullying and harassment policies are all-encompassing and that each employee is aware of what is and is **not** acceptable behaviour.

Gender Recognition Act 2004

From 4 April 2005, this Act allows transsexuals to gain legal recognition in their acquired gender; to marry into their new gender and to apply for a substituted birth certificate.

This has an impact on employment as post-operative transsexuals will have the legal gender of their acquired sex. Employers must, therefore, ensure that such employees can use toilet/changing facilities of their new sex.

Changes to the Calculation of Maternity Pay

The Statutory Maternity Pay (General) (Amendment) Regulations 2005 (!) state that where pay rises are awarded during a woman's maternity leave, she is entitled to benefit from that pay rise when calculating her entitlement during that period of leave.

Parental Rights Bill

The Queen's Speech proposes the introduction of new rights for parents including the extension of maternity leave (paid for one year); a right for the mother to have transferred some of her maternity leave and pay to the father and the extension of the right to request flexible working to other groups with caring responsibilities.

Working Time Opt-Out – 48 hour maximum to remain!

Under current proposals, the UK's right to deviate from the 48-hour maximum working week (ie the opt-out) was to be removed within three years of The Working Time Directive coming into effect. However, the Secretary of State for Trade and Industry (with the backing of employment ministers from Germany, Poland, Austria and Hungary, among others) opposed the proposals and forced the issue to be dropped for the time being. This will no doubt be welcomed by business organisations and employers' groups who had claimed that the new Directive would unduly restrict flexibility in the labour market and had urged the UK Government to strive to maintain the opt-out at all costs. This issue is unlikely to return to the European agenda now until next year.

New Face for Raworths' Employment Team

We are pleased to announce that from 4 July 2005 Sally Archibald, solicitor, joins us from Walker Morris. We congratulate her on making an excellent choice of employer! Sally is four years qualified and has specialised in employment law throughout.

Health & Safety In association with Strathmore Services Limited The Work at Heights Regulations 2005	
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Did you know that the above Regulations came into force on 6 April 2005 and that they apply to most businesses in the UK?

"Work at Height" means

..... work at **any place**, including a place at or below ground level, or obtaining access to or egress from such a place (unless by a permanent staircase) **where a person could fall a distance** liable to cause personal injury."

Does your day to day business involve any worker having to carry out work at height? If it does, then you need to be sure that your business is complying with the requirements set out in the Regulations.

The Health & Safety Executive website is a useful place to find guidance on the Regulations and what you must do to comply. The free site is:-

www.hse.gov.uk

If you want to find out more about what you need to do, please contact Ian Lynch at Strathmore Services Limited of Harrogate on 01423 530350 for further advice and information.

If you have any specific employment questions relating to your business, please contact:

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