



# EMPLOYMENT CLUB UPDATE

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SOLICITORS

ISSUE 4 - February 2008

## Discrimination by Association

A legal secretary who took time off to care for her disabled son is likely to be able to claim what has been dubbed “discrimination by association” after an opinion was given in her favour by the Advocate General to the European Court in the case. She had been described as ‘lazy’ by her former employers.

The matter will ultimately be decided by the European Court of Justice but the Court generally follows the opinion of the Advocate General.

In the meantime, employers are now going to have to take greater care in examining reasons for absence if they are to avoid breaching anti-discrimination legislation.

## 3 Months or Not Three Months

That was the question in *Joshi v Manchester City Council*. Generally, an employee must bring a claim “..before the end of the period of three months beginning with the effective date of termination.” This time period is extended by 3 months if a valid grievance is submitted within the initial time period.

Ms Joshi left her employment on 21st January 2006 and a letter of grievance was submitted on 3rd April 2006. Ms Joshi submitted her claim on 21st August 2006.

It was held that “before the end of 3 months” meant 3 months less one day and with the three month extension, Ms Joshi had to bring her claim within 6 months less one day.

As she submitted her claim exactly 6 months after she left her employment, she was out of time in bringing her claim by one day and there were no other reasons why the tribunal felt justified in extending the deadline.

## Lawyers Grapple with Age Regulations

Two recent rulings have shown that even employers who are lawyers are having difficulty with the application of the Employment Equality (Age) Regs. 2006.

Our very own Ministry of Justice found itself on the losing end of an age discrimination action when it compulsorily retired a Recorder (part time judge) at the age of 65 to provide “sufficient experience” to younger Recorders.

The tribunal found that the justifications given by the MoJ were not a proportionate means of achieving a legitimate aim and the retirement could not therefore be objectively justified.

However, only a week before, a tribunal came to the exact opposite conclusion after a law firm compulsorily retired a partner in the firm at 65 in accordance with the partnership deed.

A number of justifications were provided by the law firm including the need for more junior solicitors

to progress to partnership level. The Tribunal came to the conclusion that the retirement was objectively justified.

At the other end of the employment spectrum a tribunal has held that a timber merchant had discriminated against a job applicant in failing to employ him.

The job advert required applicants with “youthful enthusiasm”. The employee in question was 58 and had over 30 years relevant experience whereas the two individuals that were offered positions in his place were both 15 years younger with less experience.

It should be noted that all of these cases turned on their specific facts. To protect your company, make sure that you put in place objective retirement and diversity policies. Ensure that you also follow the procedure set out in the Age regulations before retiring employees.

## Vicar Accused of Bullying and Lying is Dismissed

A Church of England Tribunal which has only been convened a handful of times in the last century has dismissed a Trumpington vicar following allegations of bullying and lying. The Reverend Thomas Ambrose, who has 21 days to appeal against the ruling, was once one of the Church’s leading communications strategists! It is claimed that his congregation started to turn against him after he had, amongst other things, suggested introducing innovations such as lavatories!

## Witness Jailed for Failing to Attend a Hearing

Before you book your summer holiday, please note that a 21 year old chip shop employee was jailed for 14 days and ordered to pay £200 in costs after winning £1m on the lottery and going on holiday to the Canary Islands instead of appearing as a witness!

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