

Practice questions for chapter 27 – Discrimination law

Problem question

Has discrimination occurred in the following cases? If so, identify the form of prohibited conduct and the relevant protected characteristic.

- A firm of solicitors advertises a job opening. The advertisement states that the successful applicant will have between five and seven years' post-qualifying experience and will be under the age of 30. Becky applies for the job, but is rejected as she is 37 years old.
- Hamilton & Ross Ltd is a small firm of accountants with 5 employees. One employee, Joseph, is normally allowed to go home early on a Friday during Winter months, as it is a requirement of his religion that he be home on a Friday before sunset. He then makes this time up the following Monday. However, on one Friday, the company has to conclude a large audit that it has been undertaking and so the managing director tells the employees (including Joseph) that they are needed to work late on a Friday evening.
- Sharon is employed to cover for another employee who is taking maternity leave. A few days into the job, Sharon discovers that she is pregnant. Sharon informs her employer, who promptly dismisses her.
- Steven is wheelchair-bound. He works for Cabal Ltd, and works in an office with four other people. Three of these people (one of whom is Steven's manager) make fun of Steven and mock his disability. The other office member finds the mockery deeply unpleasant.

A firm of solicitors advertises a job opening. The advertisement states that the successful applicant will have between five and seven years' post-qualifying experience and will be under the age of 30.

- It should be noted that we are focusing here on the job requirement that the successful applicant should be under 30. The requirement that the applicant have five and seven years' post-qualifying experience is not discriminatory and many job descriptions have similar requirements.
- It should also be noted that s 39 of the Equality Act 2010 states that the relevant provisions of the Equality Act 2010 do not only apply to employment, but also to offers of employment, as is relevant in our case.
- The relevant form of prohibited conduct here is direct discrimination, which occurs where, due to a protected characteristic, a person (A) treats another person (B) less favourably than A treats or would treat others. Here, the solicitors (A) are treating Becky (B) less favourably than they would treat others (i.e. applicants under the age of 30).
- For direct discrimination to occur, the unfavourable treatment must occur 'due to a protected characteristic.' Here, the protected characteristic in question is clearly age, namely that Becky is being treated unfavourably due to her age.
- The Equality Act 2010 clearly states that direct discrimination is prohibited on the ground of age. However, in relation to direct discrimination, s 13(2) provides that direct discrimination on the ground of age will not occur where A can demonstrate that his treatment of B was a proportionate means of achieving a legitimate aim. Accordingly, direct discrimination will not have taken place if the firm of solicitors can show that Becky's rejection on the ground of her age was a proportionate means of achieving a legitimate aim. Although, we are not provided with enough facts to come to a comprehensive conclusion, it is likely that the firm of solicitors would struggle to show this.

Hamilton & Ross Ltd is a small firm of accountants with 5 employees. One employee, Joseph, is normally allowed to go home early on a Friday during Winter months, as it is a requirement of his

religion that he be home on a Friday before sunset. He then makes this time up the following Monday. However, on one Friday, the company has to conclude a large audit that it has been undertaking and so the managing director tells the employees (including Joseph) that they are needed to work late on a Friday evening.

- This is not direct discrimination, as Joseph is not being treated less favourably due to his religion (as all employees are being treated the same). This could, however, be indirect discrimination as the requirement to work Friday evening does put Joseph at a disadvantage when compared to the other employees who do not need to be home before sunset. In other words, although the requirement to work Friday evening affects all employees, it has a particularly disadvantageous effect on Joseph.
- For indirect discrimination to occur, the actions of the employer must occur in relation to a protected characteristic. Here, the protected characteristic in question is clearly religion or belief. Indirect discrimination is prohibited on the ground of religion or belief.
- However, indirect discrimination will not occur where the actions of the employer are a proportionate means of achieving a legitimate aim. Here, the aim is clearly legitimate, namely that the audit needs to be concluded. The question is whether requiring Joseph to work Friday evening is a proportionate means of achieving this aim.
- This could depend on several factors, notably whether Joseph was needed to complete the audit. If Joseph was not needed and the audit could be completed with the other staff members, then it could be argued that requiring Joseph to work would not be a proportionate means of achieving a legitimate aim. However, we are told that the firm only has 5 employees and the inference is that all employees are needed in order to complete the audit. If this is the case, the Joseph will likely not be the victim of indirect discrimination.

Sharon is employed to cover for another employee who is taking maternity leave. A few days into the job, Sharon discovers that she is pregnant. Sharon informs her employer, who promptly dismisses her.

- The relevant form of prohibited conduct here is direct discrimination, which occurs where, due to a protected characteristic, a person (A) treats another person (B) less favourably than A treats or would treat others. Here, the employer (A) are treating Sharon (B) less favourably than he would treat others (i.e. employees who are not pregnant).
- For direct discrimination to occur, the unfavourable treatment must occur 'due to a protected characteristic.' Here, the protected characteristic in question is clearly pregnancy and maternity, namely that Becky is being treated unfavourably due to her becoming pregnant.
- Direct discrimination is prohibited on the ground of pregnancy and maternity. There are no exceptions provided for in the Equality Act 2010, and so it appears that the employer has indeed discriminated against Sharon.

Steven is wheelchair-bound. He works for Cabal Ltd, and works in an office with four other people. Three of these people (one of whom is Steven's manager) make fun of Steven and mock his disability. The other office member, Diane, finds the mockery deeply unpleasant.

- The relevant form of prohibited conduct here is harassment, of which there are several different types. The relevant type here can be found in s 26(1) of the Equality Act 2010 and occurs where a person (A) engages in unwanted conduct related to a relevant protected characteristic that has the effect of violating the dignity of another person (B), or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- The relevant protected characteristic here is disability, and clearly, the mockery of Steven would fall within this definition of harassment in s 26(1).

- It should also be noted that, in order for harassment to arise, the claimant need not display the protected characteristic. Accordingly, Diane has also likely been harassed under s 26(1), as the harassment will almost certainly create an intimidating, hostile, degrading, humiliating or offensive environment for *her*.