

EMPLOYMENT LAW ROUND-UP

Employment law creates more regulations, statutes and case law than virtually any other area of law. The relationship between employer and employee is at the heart of our economy, and it is important that the wheels keep turning. But this relationship requires very careful handling; otherwise it can create some enormous tensions in the workplace. Here then are some recent court cases on the important issues of getting a reference right, and religion or belief in the workplace.

References

References must be given with great care. They must be accurate and fair. Employees and new employers place great reliance upon their accuracy, and a reference is often the key to getting a new job. Two new cases have recently gone through the courts. In the first case the High Court found in favour of Mr McKay. He used to teach at Swindon College, but six years after he left them, the College sent an e-mail to his new employers saying they would not allow Mr McKay on their premises. They said there were "safeguarding concerns for their students and some serious staff relation problems which came to light after he had left the College". His new employer summarily dismissed him. He had not worked in his new job for more than 12 months, so he could not claim unfair dismissal (although the High Court said it would have been unfair dismissal had he worked longer than that period of time).

The High Court said that Swindon College's reference was unsubstantiated and untrue. They said that Swindon College had been guilty of misstatement and negligent misrepresentation, and it was foreseeable that the damage caused to Mr McKay in the loss of his job was foreseeable. The Court said that there was still a sufficiently proximate relationship between him and the College despite the six year gap to impose a continuing duty of care on the College to its ex-employee. He was therefore entitled to

damages for the total lack of care taken by Swindon College in establishing the truth behind the accusations made. Had there been a more measured communication between Swindon College and the new employer, it is likely that would have been acceptable.

In a recent Court of Appeal decision a Social Worker, Mr Jackson, sued his former employer Liverpool City Council. They had provided a reference for him which touched on allegations that had been made about him after his employment had ended, none of which had been investigated or substantiated. The Council indicated that there had been no investigation of these issues, but had there been it would have led to a formal improvement plan. In a telephone conversation which also took place between the Council and his prospective employer, the Council made it clear that because he had left them before any investigation had been carried out; there were some questions which they were simply unable to answer either positively or negatively. The question for the Court was whether the reference was fair even though it was accepted that it was both true and accurate. The Court of Appeal expressed sympathy for him, but held that it would have been unsatisfactory to give no reference at all, and that it was difficult to see "how the questions within the reference could have been answered honestly without identifying the concerns and validations that were raised". Fairness is a question of looking at "the overall balance of the reference and any opinion contained within it". The Court of Appeal therefore ruled in favour of Liverpool City Council, holding that the reference had been fair. In that case Mr Jackson was not entitled to damages.

Discrimination on Grounds of Religion or Belief

You may remember the case of Lillian Ladele who was dismissed from her job as a Registrar of Marriages because of her refusal on Christian grounds to register civil partnerships. There was also the case of Mr McFarlane who refused to offer psycho-sexual therapy to same-sex couples as part of his job. Both of them lost in the UK courts and took their case to the Equality and Human Rights Commission, which also ruled against both of them. The Courts decided that it was proportionate for the employers to have acted in the way they did. The EHRC said it will almost always be proportionate to refuse to allow their kind of beliefs to be allowed in the work place if they are discriminatory, especially when that employee serves a public function. The

employers were pursuing their aim of non-discrimination, and were entitled to refuse to accept such action by their employees.

However, the EHRC have recently ruled against the UK courts in two similar cases. Both the employees in question were not allowed by their employers to wear a crucifix as a manifestation of their Christian beliefs during working time. They said it was wrong for the UK courts to rule that indirect discrimination could not be established by these two employees because they were unable to identify other people sharing their religion who would be put at that particular disadvantage. The fact that there was not any outright requirement to wear a crucifix to comply with Christian principles was also given too much weight by the UK courts. The EHRC ruled that the fact that not all Christians wear a cross should not “necessarily undermine the rights of those Christians for whom the display of the cross is an essential and reasonable aspect of their autonomous interpretation of their faith”. The EHRC has invited the English courts to find that “if an individual’s desire to manifest a belief is motivated by a genuinely held belief that attains a certain level of cogency and seriousness” then that person’s rights under Article 9 of the European Convention on Human Rights, which guarantees freedom of thought, conscience and religion, should apply.

Action

If you have employment issues which need advice then feel free to contact me here at **Busbys on 01288 35 9000**.

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