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The religious discrimination issue

The Church of England has recently attempted to reopen the long-running debate over the issue of religion (and religious expression) in the workplace. As Jonathan Bruck describes, the legal position on this is far from straightforward.

How far employers should go in accommodating the religious needs and requirements of staff is an issue that typically polarises opinion. The Church believes that some employers do not go far enough. A senior figure at the Church urged the government to tackle employers who give expressions of faith as automatically “offensive” and expressed “great concern” over what he believes are employers who overreact to expressions of faith in the workplace. However, there are others who believe that some employers are too accommodating (to the detriment of other staff and the business).

Striking the right balance on this issue has been one of the greatest challenges for employers over the last few years. However, it has ultimately been up to employment tribunals and courts to decide where the line should be drawn between protecting the rights/needs of religious employees and those of the business and other staff. As the law stands, this is a fine and difficult line to draw.

The government has attempted through legislation to prevent religious discrimination in the workplace. The Equality Act 2010 makes it unlawful to directly or indirectly discriminate, harass and/or victimise another in the workplace with respect to religion, religious belief and/or philosophical belief. This legislation is designed to protect not just the religious but those with other beliefs such as atheism.

The vast majority of high profile religious discrimination cases have involved allegations of indirect discrimination. This is where an employer has specific provisions, policies or practices that have the effect of disadvantaging employees of a particular religion or belief. There is no discrimination though, if the employer can show that applying such a provision or practice is 'objectively justified'. The key question that tribunals and courts have to consider is what kind of practices or policies can be objectively justified.

As the following example cases illustrate, what is objectively justifiable, turns on the facts of each case:

- **Job Responsibilities** – In *Ahmed -v- Tesco Stores Limited*, a Muslim warehouseman claimed that requiring him to handle alcohol was indirect discrimination as it was against his faith. His claim was dismissed on the grounds that supplying alcohol was a legitimate aim and requiring the claimant to handle it was a proportionate means of achieving that aim (i.e. it was justified).
- **Dress Codes** – In the case of *Eweida -v- British Airways*, an employee brought a claim for indirect discrimination after her employer's policy did not permit her to wear a 2" high cross on a necklace as a symbol of her Christian faith. The policy forbade all uniformed employees to wear visible jewellery. It also stated that any accessory or clothing item that the employee was required to have for mandatory religious reasons should at all times be covered up by the uniform. The tribunal dismissed the claim on the grounds that policy did not put Christians at a particular disadvantage. It decided that the wearing of the visible cross was not a mandatory religious requirement and although motivated by her faith was more personal than anything else.

In another case (*Chaplin -v- Royal Devon & Exeter NHS Foundation Trust*) a tribunal found that a nurse who was not allowed to wear a crucifix on a necklace at work was not discriminated against. It found that the trust's uniform policy did not put Christians at a particular disadvantage and that, for reasons concerning health and safety, the policy was objectively justified.

- **Time Off For Religious Commitments** – In Williams–Drabble -v- Pathway Care Solutions Limited, the claimant succeeded in her indirect discrimination claim after her employer introduced a new rota requiring staff to be available for work on Sundays. As a Christian the new shift meant that she would miss the only service at her usual church. The tribunal found that the new rota put practising Christians at a disadvantage and that the employer was not objectively justified in doing so after failing to show that the new shift system was justified.

In another case with similar facts, a Roman Catholic employer was also successful in his claim for indirect discrimination after he was dismissed for refusing to work on Sundays. Other cases though, have found in favour of the employer.

Despite the government’s best efforts to legislate in this field, it is likely that striking the right balance over religion in the workplace will continue to be a contentious issue amongst employers, employees, religious organisations and tribunals.

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