

The legal side of airing your views

Justin Govier and Ed Marchant explain the link between Brexit and the Equality Act

RARELY has a public issue proved as divisive as Brexit. The strength of opinion of individuals supporting either Remain or Leave has been overwhelming, and tensions across the country are still running high.

Workplace discussion on political matters will continue to rage over the coming months, but could heated debates lead to discrimination claims?

What is discrimination?

Direct discrimination under the Equality Act 2010 is, put simply, when an employee is treated less favourably than another employee (real or hypothetical) due to a "protected characteristic". The Act sets out nine protected characteristics on which employees cannot be discriminated against. Political views could potentially be included under the protected characteristic of religion or belief.

So there needs to be both a protected characteristic (political view), and less favourable treatment because of that characteristic (harassment). The less favourable treatment is an employee being treated differently to colleagues because of how they voted. If a conversation were to get heated

and violated an employee's dignity or created a hostile, offensive or intimidating environment, that is likely to constitute harassment.

Does a political view constitute a "religion or belief"?

Employment tribunals have heard many high-profile cases on whether a political view can constitute a religion or belief. The consensus is that political beliefs can be sufficient, but subject to a number of factors. The primary one is that the political beliefs must reflect a "deeper philosophical viewpoint", as opposed to a simple political opinion.

In the example of the EU referen-

dum, it is likely that, if an individual simply took into account the respective arguments and came to the conclusion to vote Remain or Leave, it would not constitute a religion or belief, and therefore could not be discrimination. However, if their decision to vote was based on a more fundamental viewpoint, this could qualify.

It could be argued that a Remain vote was based on the political principle of freedom of movement of people or forming a closer bond with Europe. Conversely, a vote to Leave could be based on deeper beliefs on the sovereignty of the UK, or in restricting immigration. No matter what these underlying reasons are, it is clear that they must be genuinely held as a "deeper philosophical viewpoint" to fall under the protection of the Equality Act.

If workplace political arguments do occur, can an employer be liable? And what can employers do to prevent this?

The doctrine of "vicarious liability" states that an employer is liable for the acts of its employees if they are carried out "in the course of employment". If the discriminatory acts of one employee towards another took place in the workplace and during work hours, it is likely they will be treated as having been committed by the employer. The only defence an employer could raise is if they show they took "all reasonable steps" to prevent the employee from doing the discriminatory act.

It is sensible for an employer to take such "steps". Have a written equality policy. Declare a commitment to workplace equality and state that discrimination is not condoned. Provide staff with equality training if it is needed. Investigate incidents thoroughly, take appropriate disciplinary action, and make an internal statement about the referendum

outcome, if there is reason to believe there could be problems among the workforce.

If an employer was unable to rely on this defence to vicarious liability, and an employment tribunal found that discrimination had taken place, the penalties can be wide ranging, including unlimited compensation. Aside from financial awards against an employer, which can be substantial, tribunal claims can also result in significant reputational damage and have a negative impact when tendering for contracts.

Justin Govier and Ed Marchant work at IBB Solicitors.