

Employer's Failure to Adequately Investigate Gay Employee's Grievances Leads to Tribunal Finding of "In-built" Prejudice

The Employment Equality (Sexual Orientation) Regulations 2003 came into force nearly three years ago amid much publicity. The Regulations outlawed discrimination in the workplace on grounds of sexual orientation, which includes less favourable treatment, applying a discriminatory provision, criterion or practice, victimisation and harassment. Despite the publicity, the Regulations have not resulted in many claims to the Tribunals compared to other stands of discrimination. There are different views as to why this is the position. However, there is a recent case from the Leeds Employment Tribunal, called *Martin v Parkham Foods Limited*, where the Tribunal concluded that discrimination under the Regulations had occurred.

The Facts

Mr Martin, who was openly gay, wrote to his employer in May 2005 about their failure to deal with his earlier verbal complaints in relation to homophobic and pornographic graffiti in the male toilet. The graffiti contained an explicit drawing with Mr Martin's name beside it. While Mr Martin's name was removed by the Company the drawing itself remained. The Company then placed notices in the toilets banning graffiti but they made no mention of the content of the prior offending graffiti or the resulting action that might be taken should this be breached. Mr Martin was told that there was little more the Company could do as it would be difficult to discover who was responsible for the graffiti. The Company took no further action at that time.

In October 2005, Mr Martin made further written complaints relating to a comment a colleague had written in a public log book stating that Mr Martin should seek work elsewhere due to his alleged unwillingness to work over-time, the fact that the offensive graffiti drawing had not been removed completely and that his name had subsequently been added to the drawing for a second time. A grievance meeting took place on 7 November. The HR Manager concluded that it was Mr Martin who was seeking to exploit his sexual orientation.

During November 2005, Mr Martin became increasingly frustrated with the way in which the Company was dealing with his grievances and raised a further grievance about a colleague's behaviour. The Company then elected to suspend Mr Martin due to the stress he was suffering and to enable an investigation to take place. Mr Martin subsequently resigned in protest in early December 2005.

Tribunal Decision

Mr Martin's claims of direct discrimination and harassment, and constructive dismissal succeeded but his claim of victimisation failed. The Tribunal did not find that he was subjected to any less favourable treatment as a result of making his complaints so his claim of victimisation failed. However, the Tribunal concluded that the Company did not deal with Mr Martin's grievances adequately. It had not complied with its own procedures nor protected Mr Martin's dignity at work. The Tribunal said it found the drawing, which it viewed on a mobile phone photograph, to be "offensive and homophobic". The Tribunal considered that there was "in-built prejudice" in the Company against gay employees. The level of compensation due to Mr Martin will be determined by the Tribunal at a separate remedies hearing.

Comment

It is quite clear that Mr Martin's grievances were handled badly by the Company due to their unwillingness to tackle very serious claims of discrimination in a meaningful way. As a result Mr Martin endured further discrimination which culminated in his resignation. There appears to have been very little effort by the Company to find out who was responsible for the graffiti and protect Mr Martin's dignity at work. Furthermore, the Company (even if they were unable to identify the culprit) could have been more proactive in preventing Mr Martin enduring further discrimination. The notices should have stated clearly the consequences for any failure to comply, the actual homophobic nature of the graffiti should have been dealt with directly and the company could have considered wider strategies, such as education of their workforce in equality and diversity and /or setting up a programme to tackle the culture which appears to have been the root of the problem. Lessons can be learned from this case that equally apply to all areas of discrimination, dignity at work generally and the extent to which grievances must be investigated by employers.

It is vital for employers to create a culture where an employee, who feels that they are being discriminated against or bullied or harassed in the workplace, is able to bring this to the attention of management and appropriate action taken. Employees need to know that their concerns will be taken seriously and handled in a sensitive manner. If nothing else this is a sensible risk management strategy for employers in avoiding claims in the Employment Tribunal.

Policies covering equality, dignity at work and bullying and harassment are not enough in themselves as employers must challenge attitudes and educate other employees to ensure that they are doing all they can to eradicate discrimination and/or bullying and harassment in the workplace. Should your organisation require assistance in this regard then please feel free to contact us to discuss the tailored training which our team of employment lawyers can provide.

This e-briefing is sent to you by Anderson Strathern's [Employment Department](#). We hope you find it useful. If we can help with any matters arising from this e-zine, or any employment law matter please contact [Chris McDowall](#), or any other member of our team.