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In this issue...

- Direct discrimination – is a comparator required where a claim is based on failure to pay allowance during maternity leave?
- Temporary staff agency found to have indirectly discriminated against Sikh work-seeker
- The ICO launches new data protection guidance
- Queens Speech 2019: Employment & Immigration implications

Direct discrimination – is a comparator required where a claim is based on failure to pay allowance during maternity leave?

In *The Commissioner of the City of London Police v Geldart* UKEAT/0032/19, the Employment Appeal Tribunal (EAT) considered whether the non-payment of a police officer's London allowance during maternity leave amounted to direct sex discrimination.

Mrs Geldart worked as a police officer in the City of London police force. After giving birth and in accordance with the force's maternity leave policy, Mrs Geldart took maternity leave during which period she received full pay for 13 weeks, half pay for ten weeks and statutory maternity pay for the remaining balance of the leave. Under the Police Regulations, special regulations applicable to police officers and used as a recruitment incentive, Mrs Geldart was entitled to a London allowance. This allowance was paid at the same rates during Mrs Geldart's maternity leave, namely the full allowance for 13 weeks, half the allowance for ten weeks and then no allowance for the remaining balance of her leave when Mrs Geldart was no longer entitled to maternity pay.

Bringing a claim in the Employment Tribunal (ET), Mrs Geldart argued that failure to pay the London allowance in full during her maternity leave meant that she had suffered a detriment and that it was direct sex discrimination.

Upholding Mrs Geldart's claim, the ET found that in accordance with the Police Regulations Mrs Geldart was entitled to be paid the London allowance in full throughout her maternity leave. As the reason for the refusal to pay the allowance was held to be

due to Mrs Geldart being on maternity leave, it was direct sex discrimination and Mrs Geldart was awarded the underpaid allowance plus £4k compensation for injury to feelings.

The force appealed to the EAT arguing that Mrs Geldart was not entitled to receive the allowance at all during maternity leave as well as that she was required to show that a man in comparable circumstances would have been treated more favourably.

Dismissing the appeal, the EAT held that the Police Regulations stated, "a member of the City of London...police force shall be paid a London allowance". Given that Mrs Geldart remained a member of the City of London police force during her maternity leave, and there was no provision within the regulations to the contrary, she was clearly entitled to the allowance. Further, the EAT held that as Mrs Geldart had been treated unfavourably due to the fact that she was on maternity leave, the ET had been correct to conclude that Mrs Geldart's claim should succeed without reliance upon a comparator (i.e. that a man would have been treated differently).

Temporary staff agency found to have indirectly discriminated against Sikh work-seeker

In *Sethi v Elements Personnel Services Ltd* the ET considered if a temporary work agency had indirectly discriminated a practicing Sikh by adopting a blanket "no beards" policy.

Mr Sethi was a practicing Sikh and adhered strictly to Kesh, a practice which requires the person not to cut any body hair. Mr Sethi sought work with an agency that worked predominantly with five-star hotels (predominantly front of house, food and beverage roles) and had a "no beards" policy. The policy was concerned with appearance, not hygiene, and had purportedly been implemented in response to demands from the agency's clients.

In return for advising the agency that he would be unable to cut his beard, Mr Sethi was told that five-star service required all staff to be clean-shaven and that facial hair was not allowed for health and safety/hygiene reasons. Mr Sethi brought a claim against the agency, alleging that the "no beards" policy amounted to indirect religious discrimination.

Succeeding with his claim, the ET held that the work agency's "no beards" policy was a provision, criterion or practice which placed Sikhs generally, and Mr Sethi in particular, at a particular disadvantage because of the Sikh practice of Kesh. The ET accepted that it was a legitimate aim for the agency to seek to comply with client requirements but considered that the blanket "no beards" policy was not justified as a proportionate means of achieving that aim. There was no evidence that the agency had considered any alternatives, such as asking their clients if they would accept a Sikh working for them who could not shave for religious reasons. The legitimate aim of meeting client requirements could have been met by accepting Sikhs, such as Mr Sethi, on to the agency's books and then addressing a client's requirements on a case-by-case basis (seeking an exception for Sikhs who were unable to shave), rather than adopting a blanket "no beards" policy.

WHAT TO LOOK OUT FOR

The ICO launches new data protection guidance

The Information Commissioner's Office (ICO) has published the following:

- New data protection guidance specifically for the assistance of small and medium sized organisations (SMEs). The “SME data protection web hub” offers self-assessment tools, guidance on hot topics and provides answers to FAQs on General Data Protection Regulations (GDPR) requirements. The new web hub can be found [here](#).
- Draft guidance on the right of access (i.e. subject access) under the GDPR. At 77 pages the draft guidance is more detailed than the previous version (April 2018) covering areas such as finding and retaining relevant information, how to supply it, manifestly unfounded requests and dealing with information about third parties. Consultation on the draft guidance is underway and concludes on 12th February 2020 – further details including the draft guidance can be found [here](#).

Queens Speech 2019: Employment & Immigration implications

On 19th December 2019 the Queens speech set out details of legislation that the government intends to carry over into, or introduce in, the forthcoming Parliamentary session. Within her speech the Queen referred to a new Employment Bill which will include:

- the right to request a more predictable and stable contract after 26 weeks’ service;
- extending the period of redundancy protection from the point an employee notifies her employer of her pregnancy until six months after the end of her maternity leave;
- introducing a new right to neonatal leave and pay in support of parents of premature or sick babies; and
- the provision of a week’s leave for unpaid carers and making flexible working the default position unless an employer has a good reason;

The Queen also announced the introduction of a new Immigration Bill which:

- will bring an end to free movement after Brexit and “lay the foundation for a fair, modern and global immigration system” said to be based on people’s skills and contribution to the UK;
- allow the Government to align the treatment of EU citizens arriving after 1st January 2021 with non-EU citizens; and
- proposes to increase the Immigration Health Surcharge (IHS), which was introduced to help fund the use of the NHS, from £400 per migrant per year currently to £625 per migrant per year. As migrants pay the IHS upfront for the duration of their visa if they plan to stay in the UK for more than 6 months, the planned increase is likely to impact significantly on migrants planning to move to the UK.

For more information on any of the items raised in this legal update please contact Nicholas Hall by clicking [here](#).

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