

# Employment Club Update

January 2010



## Recent Cases On Race Discrimination

The admissions policy of the JFS (formerly the Jews' Free School) has been held to be discriminatory by the Supreme Court when the JFS refused a pupil admission on the grounds of his ethnic origin. JFS had a policy of giving priority in admission to children who, according to the Office of the Chief Rabbi ("OCR"), were Jewish according to Orthodox Jewish principles. This meant that the pupil had to be descended from the matrilineal line of a woman recognised by the OCR as Jewish. The OCR had refused admission on the basis that the pupil's mother had converted to Judaism. However, the Court concluded that her conversion meant that she acquired both Jewish religious and ethnic status.

In an entirely separate case, a teacher has lost her appeal in relation to her suspension, allegedly on the grounds of a stereotypical view that those of Black or Afro-Caribbean origin or descent were more likely to have mental health problems than their white comparators. The Tribunal was entitled to hold that the teacher, without any good reason, had failed to fulfil her professional duties as a teacher and that whilst the mental health allegations were unreasonable and ill-founded, there was a large amount of material before the Tribunal to enable them to conclude that the suspension was not discriminatory in the circumstances.

Finally, a black Royal Navy officer who was allegedly nicknamed 'Robert Mugabe' has been ordered to pay £28,000 in costs after failing to attend a hearing because of 'work related stress'. The Tribunal Judge ordered the hearing to take place in his absence and the costs award was appropriate because basic facts advanced by the Officer at the hearing were false.

## New Compensation Limits

From 1st February 2010 the maximum award for unfair dismissal has been reduced for the first time from £66,200 to £65,300 following a decrease in the Retail Price Increase by 1.4%.

The maximum limit on a weeks pay for compensation payments based on a weeks pay (such as redundancy payments) remains the same at £380.

Statutory Maternity, Paternity and Adoption Pay rises from £123.06 to £124.08 per week but statutory sick pay remains unaltered at £79.15 per week.

## IVF And Sex Discrimination

The Employment Appeal Tribunal has confirmed that In-Vitro Fertilisation ("IVF") should be treated as pregnancy for the purposes of discrimination on grounds of sex.

A woman undergoing IVF treatment is therefore to be regarded as pregnant following implantation of fertilised ova during a statutory protected period.

Prior to implantation, less favourable treatment due to IVF treatment may be sex discrimination but only between the 'follicular puncture' and the transfer of the fertilised ova into the uterus.

## Discourteous Tribunal Members!

The discourteous conduct and hostile body language of a lay Tribunal member did not indicate that they had a 'closed mind' and were therefore 'biased' on the facts of the case.

Her obvious exasperation and failure to conceal her opinion of some of the 'unmeritorious' evidence put to her meant that her conduct had fallen below that expected of a Tribunal member but that was not the same as a finding of bias and the decision of the Tribunal was upheld.

## Hair Dress Code Justifiable

A male trainee police officer who was told that he could not wear his long hair in a 'bun' on the top of his head was discriminated against in that it was common ground that a comparable female employee would not have been discriminated against in the same circumstances.

However, the discrimination was held to be justifiable because it "fit with the conventions of society and the needs of the profession". Female officers would be disciplined for failure to comply with the dress code as applied to females in the same way as male officers regarding the dress code as applied to male officers.

## HR Manager Convicted of Fraud

A senior NHS human resources manager who lied about having specific marketing qualifications and claiming that she had nearly obtained her membership of the Chartered Institute of Personnel and Development in six attempts to obtain employment has pleaded guilty to six counts of fraud by false representation.

She was fined £9,600, received a six month suspended prison sentence and was ordered to carry out 150 hours of unpaid community work.

*These notes are for guidance purposes only. We believe the contents to be correct but it should not be taken as sufficiently accurate or full to apply in any specific situation without first referring to us. We would be pleased to advise on any specific issues or problems.*

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