

NEWS FROM THE HR TEAM



Female banker wins case for sex discrimination for unequal pay and victimisation as her employer failed to conduct the Grievance process as required



In the case of *Stacey McKen v BNP Paribas*, the female employee initially raised a grievance citing unequal pay when she became aware that her male counterpart had been employed on a salary of £160,000.00 compared to her salary of £120,000.00. Further, she requested explanations as to why she had not been awarded a bonus when her male counterpart received a bonus payment of £70,000.00 for that same year whilst performing the same role as her.

McKen also made a case for harassment citing examples of when she had been told stories by her managers referring to sexually crude events, when colleagues had left a witches hat on her desk and of the regular comments made to her by a manager, 'not now Stacey', whenever she tried to raise any issues.









Following her grievance, she found that her performance reviews were hostile and the relationship between her and the management team deteriorated.

Further though, the ET found that the grievance process was designed more to reject complaints, rather than to fully investigate and resolve them. The ET commented in its judgement;

"We consider that the grievance process was really designed to reject the claimant's complaint. No proper and rigorous investigation of why there was a differential in pay was conducted. We consider that was, at least in part, because the claimant had raised allegations of inequality of pay and bonus. There was a determination to defend the respondent against the allegations rather than investigate them properly. This was victimisation."

The ET is yet to deliver a decision on the award to be given and the Claimant is seeking £4 million in damages for discrimination and victimisation.

Employers are reminded of the vital role of the Grievance process and the need to conduct a thorough investigation to evidence their findings and outcomes.

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Racial harassment and the need for employers to ensure they have acted reasonably to reduce their liability for incidents between employees

In the case of Mr A Leader v Mr A Hossack and Leeds City Council, in an unusual move the ET dismissed claims against the employer stating it had shown and taken all reasonable steps to prevent Hossack from making racist comments.

The Council had invited Hossack to attend a disciplinary hearing, but Hossack resigned before the meeting could take place.

Hossack and Leader would travel together in a works vehicle. Leader explained that he had been subjected to comments by Hossack such as;

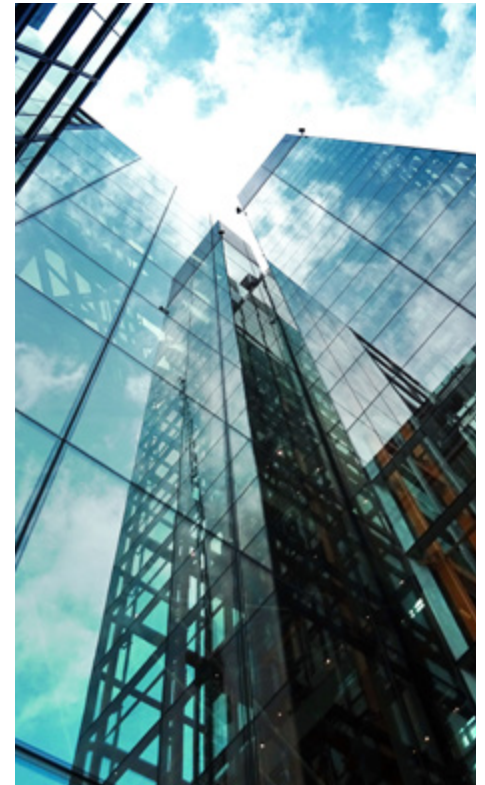
"If you think its cold here, you should take your black arse over there", "your arse is black isn't it", (referring to a weather report of -11 at the winter Olympics.)

"f***ng foreigners", referring to a vehicle with a Polish number plate

Leader explained he had become uncomfortable when at work and seeing Hossack, as those comments had caused him upset and he felt Hossack was racist.

The ET found that Leader had been subjected to racial discrimination from Hossack and was awarded £2,769.00, plus interest from Hossack for injury to feelings.

In this case the steps the employer had taken to address the situation were considered and employers are reminded of the need to ensure they have a well communicated Equal Opportunities policy in place and they act upon any allegations of discrimination swiftly and correctly.



Is Vegetarianism a protected characteristic?

An ET has ruled it is simply a lifestyle choice. Norwich ET ruled that Vegetarianism does not meet the criteria required for it to be held as a philosophical belief.

This followed a case raised by an employee, George Conisbee, who stated he had encountered discrimination from his work colleagues for being vegetarian.

Whilst the ET found that Vegetarianism was a lifestyle choice, the ruling on Veganism still remains open as Vegans believe that a diet unrelated to any animal produce contributes to managing climate change and a civilised society, and this may classify as a philosophical belief as determined under the Equalities Act 2010.



Suspension for a Teacher with Bipolar deemed discriminatory

A teacher suffering from Bipolar remained suspended from work despite providing evidence that he was fit to be at work from his Psychologist and GP. Day-Davies suffered from mood swings and periods of depression due to his particular type of Bipolar disorder.

The medical evidence was rejected due to concerns raised by his colleagues, and the Tribunal accepted he had been discriminated against as he was kept on suspension following receipt of the medical evidence.

In such cases, it can be difficult for employers to manage observed concerns against medical evidence and assessing the employee's ability to carry out their duties. Employers in similar situations should seek advice on how to obtain further medical guidance or even have an Occupational Health Assessment carried out to identify what reasonable adjustments if any would be appropriate to support the needs of their employee and that of the business.



Shared Parental Leave Pay

The cases of *Ali v Capital Customer Management Ltd* and *Chief Constable of Leicestershire v Hextall* considered whether it was discriminatory not to pay full salary to a father, taking shared parental leave, where a mother, taking maternity leave, would have received full pay. The Court of Appeal held it was not direct or indirect discrimination, nor did it give rise to an equal pay claim.

Mr Ali's wife was suffering from post-natal depression and was advised to go back to work. Mr Ali, therefore, requested to take shared parental leave so he could care for their baby. He became aware that female employees on maternity leave were entitled to full pay for 14 weeks and requested the same. When this was refused, he submitted a grievance based on sex discrimination. It was accepted that the first two weeks of maternity leave are compulsory and associated with recovery after childbirth, and so is unique to the mother. However, the Court of Appeal additionally decided that the Claimant could not compare himself with a woman on maternity leave because the purpose



of this leave was different to Shared Parental Leave. Maternity leave is used for the health and wellbeing of the mother whereas the purpose of shared parental leave is to aid with the childcare.

This case provides reassurance to employers that they can have differing approaches to maternity and shared parental pay, without the risk of a discrimination or equal pay claim.

The statutory minimum wage;

Employees must be 16 years and older to qualify for the National Minimum Wage;

Apprentice	£3.90ph
Under 18 years	£4.35ph
Aged 18 - 20	£6.15ph
Aged 20-24	£7.70ph
Aged 25 and above	£8.21ph



Statutory awards and compensation awards;

Maximum compensatory award for unfair dismissal (unlimited for certain automatically unfair dismissals, for example, health and safety or whistleblowing): £86,444

Maximum basic award for unfair dismissal and statutory redundancy payment: £15,750 (30 weeks' pay subject to the limit on a week's pay)

Minimum basic award for dismissal on trade union, health and safety, occupational pension scheme trustee, employee representative and on working time grounds only: £6,408



Employee with diabetes 'humiliated' at work awarded £14k for disability discrimination

An employee with type 1 diabetes who was left feeling "intimidated, under the spotlight and concerned for her job" was awarded £14,000 for disability discrimination and harassment.

An East London ET ruled that from the outset of her two months' employment as a fleet administrator at Weston Homes, Holly Carr was "humiliated" and "highly embarrassed" as a result of the treatment she received at the housing company.

The court heard of several incidents during Carr's employment. In one incident Carr, who was being taken around the office to meet first aiders, was introduced to people in

the office as "This is Holly, she's a diabetic". In a separate incident Carr was warned by her line manager she would be "sacked on the spot" if she told the chairman's PA the reason, she was late was because she felt unwell due to low blood sugar.

