



EMPLOYMENT LAW NEWSFLASH E BULLETIN

Legislation Update

On 1 October 2007 the Racial and Religious Hatred Act 2006 comes into force, creating a new criminal offence of inciting (or 'stirring up') hatred against a person on the grounds of their religion.

Whilst this is a criminal and not civil offence, an act of religious discrimination in the workplace could also amount to such a criminal offence.

Smoking in the Workplace

It was held in the case of *Smith v Michelin Tyre PLC* that a dismissal for gross misconduct on grounds of a one-off breach of a no smoking policy was fair. The employee worked in the employer's factory using highly flammable materials. The Tribunal considered that the dismissal was fair, and that the one-off offence in 12 years of employment had to be weighed against the importance of the no smoking policy in the potentially hazardous workplace environment.

Capability Dismissals

In *McAdie v Royal Bank of Scotland* it was decided that an employer could fairly dismiss an employee for ill-health capability despite the stress-related illness in question being caused by the employer's conduct.

The Court of Appeal held that the key issue for determination is whether the action of the employer was reasonable in all the circumstances, which included the employee's inability to return to work and a lack of suitable alternative employment.

It was stated in the ruling that where an employer is responsible for such ill health, effort should be made to find suitable alternative employment or to accommodate an extended period of sickness absence, rather than dismissal.

Data Protection

Employers are increasingly receiving requests for information from employees under the Data Protection Act 1998. The Information Commissioners Office, the body responsible for regulating and enforcing the access to and use of personal information, has published detailed guidance on what constitutes "personal data" under the Act, a subject which has caused a great deal of confusion.

The guidance is available online and provides useful detail on this issue, and can assist employers when unsure if material held falls into the category of "personal data". www.ico.gov.uk

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