
Legal UPDATE

Discrimination by Association and Perception

The Equality Act 2010, the core provisions of which came into force on 1 October 2010, has harmonised and replaced previous discrimination legislation. Previously, the position on discrimination by association was inconsistent across the various strands of discrimination law and far from clear. For example, the wording of the Disability Discrimination Act 1995 (DDA) was such that it afforded protection to disabled employees but not to an employee who was discriminated against because of his or her association with a disabled person. When the law was challenged on the basis that it did not implement properly the EU Equal Treatment Framework Directive (*Coleman v Attridge Law*), the courts decided that the DDA should be interpreted as if it did apply to adverse treatment by reason of the disability of another person. The Act has now established that discrimination by association is unlawful, subject to the same exceptions that generally apply.



Under the Act, discrimination occurs when the reason for one person being treated less favourably than another is one of the protected characteristics covered by the Act. This means that protection is afforded to someone who does not themselves have the protected characteristic but has suffered less favourable treatment because of their association with someone who does.

In the light of this change, employers should take care, for example, not to disadvantage employees with caring responsibility for a disabled child or for an elderly or disabled relative.

The new definition of discrimination also covers discrimination by perception, as protection is afforded to someone who does not themselves have the protected characteristic but has suffered less favourable treatment because they were wrongly perceived to do so.

This change makes it clear, for example, that someone who is repeatedly taunted as being gay but is in fact heterosexual is protected under the Act.

Employers must show that they operate a zero-tolerance policy to discriminatory of any kind and ensure that decisions affecting employees cannot be challenged as having been made based on a discriminatory perception.