EAT amends 'trigger' for collective consultation

An employer contemplating collective redundancies in 'establishments' is required by the European Directive on collective redundancies to consult with workers' representatives, whereas under UK law employers must consult collectively when 20 or more redundancies are proposed at one 'establishment'. The clear difference is that for the duty to be triggered, EU law applies even though the dismissals may be at different establishments, but in the UK the 20, or more, dismissals have to be 'at one establishment'.

In USDAW v Ethel Wilson Ltd (in administration) and Woolworths, when Woolworths became insolvent, an employment tribunal decided that each store was a separate establishment. Therefore, the duty to consult did not apply to any store with fewer than 20 employees, meaning that over 3,000 former employees could not receive a protective award for a failure to consult. The EAT ruled that the words "at one establishment" are henceforth to be disregarded for the purposes of any collective redundancy involving 20 or more employees, meaning that once there is a proposal to make 20, or more, employees in a business redundant, their location becomes irrelevant. As an example, if a retailer is closing 30 stores, and employs fewer than 20 staff in each location, this ruling by the EAT means that there will now be a duty to consult collectively about redundancies in all 30 stores, whereas beforehand there would not have been any duty to consult collectively at all. This marks a significant change in the law as the rule now is that the collective redundancy consultation trigger is a proposal to make 20, or more, employees redundant, irrespective of where they work.

Anti-Semitic views not a philosophical belief

In Arya v London Borough of Waltham Forest, Arya was dismissed from his position as a teacher, following various allegations of misconduct including voicing anti-Semitic views to a colleague in a text message and an email. Amongst Arya's various tribunal claims was one of discrimination because of a philosophical belief that "the Jewish religion's professed belief in Jews being 'God's chosen people' is at odds with a meritocratic and multicultural society". The first step was to decide whether his belief came within the protected characteristic of a "philosophical belief" under the Equality Act 2010. Applying the guidance in Grainger plc v Nicholson [2010] IRLR 4 the tribunal decided that Arya's belief is genuinely held, does affect his way of life/view of the world and does attain a certain level of cogency, seriousness, cohesion and importance. But his belief failed the part of the test which requires that it must "be worthy of respect in a democratic society and not incompatible with human dignity and/or conflict with the fundamental rights of others". In the tribunal's view Arya's views could not be a "philosophical belief" because they are formed on prejudice and negativity about the Jewish religion.

Participation in banter doesn't mean it's wanted

In Leitch v Heart of England Properties Ltd, Leitch, is a homosexual, but had not revealed his sexual orientation at his workplace. Leitch resigned after allegedly being subjected to harassment related to sexual orientation which in particular included a colleague often calling him "gay boy", saying "are you looking at my bum?", openly asking him if he was gay and enquiring whether he had ever "been with a woman". The tribunal upheld Leitch's claim. Although Leitch had not complained initially and had participated in the 'banter' to some extent, he had complained to his manager towards the end of his employment and had told his colleague to stop. This supported Leitch's claim that the behaviour was in fact unwanted and created an offensive working environment. The fact that he had not complained earlier and had participated to a certain degree did not mean that he condoned the behaviour, particularly in light of the employer's own Bullying and Harassment at Work policy which makes the point that the 'victim' may 'side with the abuser as a way of avoiding attention'.

Draft Deregulation Bill 2013 published

The purpose of the draft Deregulation Bill, published on 1 July 2013, is to reduce or remove burdens on civil society, public bodies, the taxpayer and individuals by repealing legislation that is no longer of practical use. The Bill contains a significant amendment to anti-discrimination law. Under Clause 2, S.124 of the Equality Act 2010 will be amended to remove the powers of employment tribunals to make wider recommendations in successful discrimination cases. The purpose of these recommendations is to benefit the whole workforce, rather than just the claimant alone. However, the Government considers that the power adds little to the existing powers of the tribunals and that wider recommendations may not benefit the claimant in question.

DPP publishes final guidelines for prosecutions involving social media communications

The Director of Public Prosecutions has published final guidelines for prosecutors on the approach they should take in cases involving communications sent via social media. The final guidelines are broadly similar to those published for consultation. Some of the changes include making it clear that communications targeting specific individuals relates to communications that constitute harassment or stalking; and that where a communication might constitute a credible threat of violence or harassment or stalking, prosecutors should consider whether the offence is racially or religiously aggravated or whether there is aggravation related to disability, sexual orientation or transgender identity. Employers are advised to consider the guidelines when reviewing their social media use policies, in particular highlighting where the possibility of a potential criminal prosecution may exist.

Simons Muirhead & Burton
8-9 Frith Street London W1D 3JB
☎Tel:+44 (0) 20 3206 2700 Fax:+44 (0) 20 3206 2800