



Harassment on the grounds of sexual orientation

Introduction

Regulation 5(1) of the Employment Equality (Sexual Orientation) Regulations 2003 (“the Regulations”) provides that harassment, on the grounds of sexual orientation, occurs where a person engages in unwanted conduct that has the purpose or effect of violating a person’s dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

In the recent case of *English v Thomas Sanderson Limited* the Court of Appeal had to decide whether the Regulations extend to protect an employee who was the target of homophobic abuse, even though he was not gay and his colleagues did not perceive him to be gay.

Facts of the case

Mr English was a happily married father of three and was engaged by the Respondent under a contract for personal services between 1996 and 2005. In November 2005 he issued a claim for harassment pursuant to the Regulations. He alleged he had been subjected to “homophobic banter” by four colleagues at work, following the discovery by his manager that he had attended boarding school and lived in Brighton.

This “banter” included being called a “faggot” and the abuse was so habitual that lurid jokes about him appeared in the in-house magazine.

Decision of the Employment Tribunal

The Tribunal found that Mr English would only be protected from harassment under the Regulations if (1) he was gay; (2) he was perceived to be gay by his colleagues or (3) he was harassed for failing to follow an instruction to discriminate against another on the ground of sexual orientation.

The Tribunal accepted that Mr English did not fall within any of

these categories and as such any unwanted conduct towards him had not been “on the grounds of sexual orientation” and therefore his claim failed.

Mr English appealed this decision to the Employment Appeal Tribunal who upheld the Tribunal’s decision but gave him leave to appeal to the Court of Appeal.

Court of Appeal’s decision

The Court of Appeal allowed Mr English’s appeal holding that his case did fall within the Regulations. The court considered it irrelevant whether Mr English was gay or whether his tormentors knew of his true sexuality. The incessant “banter” he had been subjected to created a degrading and hostile working environment on the grounds of sexual orientation.

Conclusion

This case clarifies the scope of the Regulations and makes it clear that they do extend to protect an employee from homophobic abuse even where he is not actually gay and is not perceived or assumed to be gay by his tormentors.

The reasoning adopted by the Court in this case will also apply, by analogy, to harassment on the grounds of race, age and religion/belief. This means, for example, that an employee who is repeatedly called a “Paki”, when he is not of Asian origin and his abusers do not believe that he is, could bring a claim for harassment under the Race Relations Act 1976.

In view of the above, employers need to make it clear to employees that any harassment or discrimination on the grounds of sexual orientation, race, age and religion/belief is wholly unacceptable, regardless as to whether or not they believe that person is of a particular sexual orientation, race, age or belief.

If you would like to receive more information regarding the contents of this newsletter or information on any other employment law related matters then please contact **Russell Brown** at Glaisyers Solicitors LLP, One St James’s Square, Manchester M2 6DN. Tel: 0161 832 4666; Fax: 0161 832 1981; Email: rw@glaisyers.com

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