

## Being bullied at work? Now you can sue!

On 12 July, the law lords gave a ruling that could give a great boost to combating a bullying culture at work. Until now, harassment claims could only be taken to employment tribunals if they were on the grounds of sex, race, disability, sexual orientation, religion or belief or age. It was believed that the Protection from Harassment Act 1997, which was introduced to deal with stalkers, did not cover harassment and bullying at work. But Mr Majrowski took a claim under the Act to the county court against his former employer Guys and St Thomas NHS Trust, that they were vicariously liable for the homophobic bullying he had experienced from his line manager. After a series of appeals, the case ended up in the House of Lords. The law lords ruled that an employer could be held vicariously liable and ordered to pay damages for harassment of one worker by another, as long as the bullying was closely connected with the duties of the job.

This should really sharpen the minds of management in colleges and universities in relation to harassment and bullying procedures. Check yours out, and ensure that it is sufficiently robust to reflect the new situation.

## Age regulations – some questions answered

Most members now seem to be aware that the age regulations, making it illegal to discriminate on the grounds of age in employment and training, are due to come into force soon.

The Equality Unit has been getting a large number of questions about them. Here are some of the questions answered.

### Q1. When do they come into force?

1 October 2006

### Q2. Why is the government legislating on this now?

They had no choice. The European Equal Treatment Framework Directive 2000 required all members' states to introduce legislation outlawing age discrimination. 2006 was the latest possible date by which this had to be done.

### Q3. What will become illegal?

Theoretically, it will be illegal to discriminate directly or indirectly on the grounds of age in employment and training. Training is taken to include all FE and HE courses, so the regulations apply to students as well as staff.

However, there are so many weaknesses and exceptions in the Regulations that the protection they provide will be very weak. While it will clearly be illegal to advertise a job asking for applicants aged 25-35 for example, much else will be allowable. Unlike all other forms of discrimination law, even direct discrimination can be justified if the employer (for staff) or the training provider (for students) can show that it was 'a proportionate means of achieving a legitimate aim'. See also the next two answers.

### Q4. What about length of service benefits?

The Regulations specifically permit length of service benefits up to five years. So a six-point incremental scale (a starting-point and five progression points) presents no problem at all. After five years, length of service benefits will have to be justified by the employer on business grounds such as rewarding loyalty/experience, motivating or retaining staff. It remains to be seen how this will be dealt with in the courts but a few managements appear to be saying that a scale with more than six points is now problematic. If this is happening in your institution, the branch/local association should contact the regional office. More detailed advice will be issued on this topic

once the Higher and Further Education Committees have had a chance to consider the position.

### **Q5. Can they still make me retire at 65?**

Yes. The government has introduced a 'default retirement age' of 65, which employers are free to adopt. Some institutions will choose not to do so, but most probably will. Employers cannot have a retirement age of less than 65, unless they can objectively justify a lower age, and it is hard to see what justification there could be for compulsorily retiring lecturers at 60.

If your institution does adopt the default retirement age, they must follow a process. The employer must write to each member of staff no more than a year and no less than six months before her/his 65th birthday, telling them of the intended retirement date, and of the right to request to continue working (special transitional arrangements apply from 1 Oct 2006 to 1 April 2007 - see Equality Extra for more detail.) Staff who wish to continue must put a request in writing, and then there must be a meeting, with the right to be accompanied, and to appeal if refused. The bad news is that the employer has to give no reason for refusing, and as long as the process has been followed properly, forcing someone to retire at 65 will be deemed fair dismissal.

### **Q6. That seems very unfair. Can anything be done to challenge it?**

Heyday, a membership organisation formed by Age Concern, is taking a Judicial Review against the government, on the grounds that the Age Regulations do not properly implement the European Directive upon which they are based. They are challenging: the legality of forcing employees to retire at 65; the scope for justifying direct discrimination; the absence of a requirement for the employer to give reasons for refusing a request to continue working. The outcome of this Judicial Review will not be known for some months. UCU entirely supports Heyday's challenge.

### **Q7. If all FE and HE courses are covered by the regulations, what might be illegal age discrimination against students?**

The government is not giving any clear answers on this, and many issues will probably have to

be sorted out in the courts. (Students who believe they are facing discrimination can take the college or university to county court). Having specific age limits on admittance to courses will obviously be problematic, but it may be possible to 'objectively justify' those; for example requiring a minimum age of 21 for access courses could be justified if the institution could show a need for encouragement of participation by mature students. Blanket fee remittance for pensioners on evening classes could be problematic – financial need for support might need to be the criterion used instead. Allowing benefits (eg access to student accommodation) to some age groups and not others could be highly problematic.

### **Q8. What about government funding for students? Aren't they guilty of age discrimination?**

Yes! The government has just moved the age limit for student loans from 55 to 60 from September 2006. Age discrimination, but at a different threshold! Government policy of concentrating FE funding on 16-19 year olds, thus leading to massive cuts in adult education, is profoundly discriminatory. They are confident they are acting within the law, because the European Directive states that it does not apply to payments made by state schemes and they claim this exempts both student support and funding for courses. There is a growing coalition, including UCU, prepared to campaign on this issue on moral grounds, and shame them into change.

### **Q9. What should we be doing in the branch/local association?**

Ensure that your management has proper procedures in place for dealing with retirement, including during the transitional period. Negotiate a policy on age equality. A model policy has just been agreed between the AOC and the FE recognised unions, and has been sent out to colleges.

### **Q10. What will get better?**

Although the Regulations are so weak, employers seem very frightened by them. They might lead to a change in the general atmosphere and culture, so that overtly ageist remarks and attitudes are not acceptable.

### Q11. Could anything get worse?

Currently, 57% of employers (mostly small ones) do not have a fixed retirement age. Lawyers are advising them to adopt one for self-protection. They are also advising a blanket refusal of requests to continue working, so that discrimination on other grounds, such as sex or race, could not be claimed. So employers who used to let some workers stay on after 65 may cease to do so.

### Q12. Where can I get more information?

The detailed UCU guidance is at:

[www.ucu.org.uk/media/pdf/9/t/ageregs\\_guidance\\_1.pdf](http://www.ucu.org.uk/media/pdf/9/t/ageregs_guidance_1.pdf)

The ACAS guidance, which is as close as you can get to official guidance can be found at:

[www.acas.org.uk/media/pdf/d/t/6683\\_Age\\_and\\_the\\_Workplace\\_AWK.pdf](http://www.acas.org.uk/media/pdf/d/t/6683_Age_and_the_Workplace_AWK.pdf)

TUC advice at:

<http://www.tuc.org.uk/equality/tuc-11775-f0.pdf>

Equality Challenge in HE [www.ecu.ac.uk](http://www.ecu.ac.uk)

## Amendments to the post-16 education provisions of the Disability Discrimination Act

The post-16 provisions of Part 4 (the education section) of the Disability Discrimination Act 1995 have been amended from 1 September 2006, so as to comply fully with the European Employment Framework Directive. The new duties will apply to virtually all universities and colleges.

The main changes are:

- a new direct discrimination duty
- the removal of the justification defence for a failure to make reasonable adjustments
- a new harassment duty
- the reversal of burden of proof
- a new duty prohibiting discriminatory advertisements
- a new duty prohibiting instructions or pressure to discriminate
- new specific duties that apply after the relationship between the student and education provider has ended
- new specific provisions in relation to qualifications
- the introduction of competence standards.

Probably the most significant changes for UCU members is the introduction of competence standards, rather than the previous practice of justification of exclusion of disabled students on the grounds of academic standards. It will now be easier for students or potential students to prove they have been discriminated against by a college or university because of the shift in the burden of proof. Branches/local associations should ask management to provide training for staff on what the changes will mean.

## Improvement for working parents

The Work and Families Act 2006 became law in June. It contains a number of complex changes to the benefits open to parents, many of them quite minor. However, there are several significant improvements to the existing provision, coming into force on 1 October 2006.

From that date, Statutory Maternity Pay (SMP) and Statutory Adoption Pay (SAP) will be extended from 26 weeks to 39 weeks. The statutory rate remains the same – 6 weeks at 90% of average earnings, and 33 weeks at flat rate (currently £108.85 a week) or the 90% rate if this is lower.

This will apply to women with babies due or a child placed for adoption after 1 April 2007. The intention is to extend SMP and SAP to 52 weeks by the end of this parliament. In the meantime, the length of service requirement for additional maternity leave (AML), which is unpaid, has been removed, so all mother who are employees will qualify for AML and will be able to choose to take up to one year off work. At the same time, the introduction of optional 'keeping in touch' (KIT) days will be implemented. This means that mothers or adopters will be able to go into work for up to 10 mutually agreed KIT days during their leave, without losing SMP or SAP entitlement. Currently, a woman loses one weeks SMP or SAP for each week she does any work, however little.

Whether this provision will be of benefit to women, and whether it really will operate totally by mutual agreement remains to be seen.

From 6 April 2007, the right to request flexible working has been extended to carers of qualifying adults. Currently the right only applies to

parents with children under six. There was much disappointment that the right was not also extended to parents of older children.

Finally, the Act allows for the introduction of regulations relating to paternity leave and pay. It does not give a firm date by which these regulations will be introduced, and the government is still consulting on the detail of what will be introduced. Currently, new fathers can take up to two weeks paternity leave with statutory paternity pay (SPP) paid at the same rate as SMP. The Act provides employers (fathers, or same-sex partners) with a new entitlement to take a maximum of 26 weeks additional paternity leave (APL) to care for a child before the child's first birthday. For a partner to be able to take this leave and receive pay, the mother must have returned to work and have some SMP remaining. It is the mother's choice whether to return and effectively transfer some of her SMP to her partner, or to continue with her maternity leave and payments. Clearly, this is a very complex issue, and debate has raged about whether it is a good thing or not. As the consultation on the details is still ongoing, the Equality Unit would welcome any comments on this issue.

## All for race equality

### Are you...?

On **16 November 2006** the UCU will be launching a major race equality campaign focusing on change in the further and higher education sectors.

The Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000 places a general duty on a range of public authorities to promote race equality. The duty aims to make the promotion of race equality **central** to the way public authorities work, thus improving the way in which public services are delivered for everyone.

The duties came into effect on **3 December 2001**. All public authority bodies bound by the duty were required to have in place a timetable for meeting the requirements by **31 May 2002**. Despite these clear timelines, we have identified

a number of HE and FE institutions who have yet to comply with the duties.

It is important for branches/local associations to work with institutions to develop monitor and assess race relation policies and the impact it has on staff and students. The campaign will be aimed at all members and officials and will provide branches/local associations with guidance on engaging with their institution in driving the agenda forward. There will also be information on the rights and responsibilities of members; assistance with referral protocols; advice on black staff networks and useful links with partner organisations.

Too often the issue of race equality is one that is viewed as peripheral to an organisation or met with a degree of defensiveness on the part of management. There is, concurrently, a great deal of discussion about the role of leadership in moving forward the issue of race equality. The thrust of this campaign will enhance the accepted notion of leadership to suggest that substantial change will only happen with **our** active engagement.

Further information will be circulated in due course.

### Get in touch

Please send any views, letters etc for this publication to [eqadmin@ucu.org.uk](mailto:eqadmin@ucu.org.uk) For queries in relation to anything in this email, please use the following contacts. To contact the Equality Unit for more information about:

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