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Attwaters' Employment Update

The Equality Act 2010 ("EA") in October 2010 has repealed the existing discrimination law and placed it in one all encompassing act. This article discusses the issue of associated disability discrimination. The case of *Coleman v Attridge Law* provided that disability discrimination by association would be protected under the previous law. Under the EA this right has now been included in statute.

Section 13 of the EA defines direct discrimination as;

"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

Section 6 of the EA defines disability as;

"A person (P) has a disability if; P has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities."

Schedule 1 of the EA sets out further explanation as to what determines disability;

Long-term effects;

"The effect of an impairment is long-term if; it has lasted for at least 12 months, it is likely to last for at least 12 months, or it is likely to last for the rest of the life of the person affected."

"If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur."

Effect of medical treatment;

"An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if; measures are being taken to treat or correct it, and but for that, it would be likely to have that effect. "Measures" includes, in particular, medical treatment and the use of a prosthesis or other aid."

Certain medical conditions;

“Cancer, HIV infection and multiple sclerosis are each a disability. HIV infection is infection by a virus capable of causing the Acquired Immune Deficiency Syndrome.

Progressive conditions;

This paragraph applies to a person (P) if P has a progressive condition, as a result of that condition P has an impairment which has (or had) an effect on P's ability to carry out normal day-to-day activities, but the effect is not (or was not) a substantial adverse effect. P is to be taken to have an impairment which has a substantial adverse effect if the condition is likely to result in P having such an impairment.”

Associated disability discrimination occurs when an individual suffers direct discrimination due to their relationship with a person who has a disability; for example carers. The EA however does not extend the right to “reasonable adjustments” to employees associated with a disabled individual. The Equality and Human Rights Commission's (“EHRC”) guidance provides examples of disability discrimination by association;

- An employer does not give someone the job, even though they are the best qualified person, just because the applicant tells the employer they have a disabled partner.
- An employer allows all staff with children to leave work early one afternoon before Christmas to attend their children's school play or show. They assume that an employee with a disabled child will not need this time off so do not give them the same concession
- A small chain of fast food restaurants gives staff with children vouchers so that they can take their children for cheap meals. One member of staff has a disabled child and does not receive the vouchers because their manager assumes that the child will not be able to go to the restaurant.
- An employer does not ask a worker if they would like to go on a training course because they know the worker has a disabled partner who they assist in day-to-day tasks like washing and dressing. The employer assumes the worker would not want to be away from home for a longer than usual working day, which is what the training would involve. However, the worker should still be asked if they want to go on the course. Instead, they have been excluded from this opportunity.
- A manager gives the father of a disabled child a bad report because they disapprove of the man's requests to attend his child's hospital appointments.
- An employer selects a person for redundancy not because they meet the selection criteria, but simply because they have a disabled child and the employer believes they may need time off to care for their child.

- A lone father caring for a disabled son has to take time off work whenever his son is sick or has medical appointments. The employer appears to resent the fact that the worker needs to care for his son and eventually dismisses him.

These examples are not to be considered defining reasons for a claim for disability discrimination however they will be taken into account by a Tribunal should an individual make a claim under the EA. It should be noted that a claim under discrimination is uncapped and as such businesses need to make sure that employees and management are fully aware of what behaviour will not be accepted.

Should you wish any further information concerning this article or any other employment matters please contact Tim Carter by clicking on the button below.

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