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Tattoos, Coppernobs and Fatties

Employers might be forgiven for thinking that there is no end to the protection afforded to employees from unlawful discrimination; currently any form of less favourable treatment is outlawed where it is done on the grounds of age, sex, marital status, sexual orientation, race, colour, ethnicity, nationality, disability, religion or belief.

Yet enterprising employees continue to find ways to push back the boundaries still further. Earlier this year a 25-year old Hertfordshire temp, Rebecca Holdcroft, generated significant publicity when she complained that her employer's attitude to her extensive tattoos amounted to discrimination. She was initially told to keep her arms covered at all times, although later on she was permitted to wear short sleeves whilst at her desk on the basis that she covered up when walking around the office. Although the case made it into the national press it is unclear whether it ever made it to an Employment Tribunal.

The Holdcroft case echoed a claim brought a couple of years by a male office worker against the Department of Work and Pensions. He complained that the DWP's requirement to wear a collar and tie amounted to sex discrimination upon the basis that his female colleagues were allowed to dress more casually. His claim initially succeeded in the tribunal although the ruling was overturned on appeal.

More recently a waitress from Plymouth succeeded in a claim she brought following taunts made to her on the basis that she had ginger hair. She argued that a series of comments made by the owner of the café where she worked – comments which were apparently translated into Turkish for the benefit of other employees – amounted to discrimination. There is of course no freestanding right of protection from discrimination for ginger people, but she argued that the nature of the comments were such that her employers would not have made them to a male employee. The

comments were held by the Tribunal to be 'innuendo' and therefore unlawful sexual harassment. The employee was awarded compensation in excess of £17,000.

And finally, with the UK's obesity crisis making headlines on an ever more regular basis, the issue of discrimination against the overweight is going to loom large in the employment context before too long. A survey earlier this year found that over 90% of HR officers would employ a thin person over a fat one even where the two candidates had identical skills and experience. It seems a widely held belief that fat people are less productive and enthusiastic than their slimmer counterparts. Again, discriminating against an overweight employee – for example by failing to promote them – is currently not unlawful and there are no legislative plans to change this, although it is not difficult to see how enterprising employees, trade unions and solicitors may try to argue in the case of the seriously obese that they fit the definition of a disabled person in the Disability Discrimination Act 1995; and as such are substantially protected in the workplace.

What is clear is that employees and their advisers will continue to challenge the limits of the existing regime of protection from discrimination; and equally that employers need to be ready to respond.

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