

### Tidings of Comfort and Joy

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The lights are low, chestnuts are roasting by an open fire and the mistletoe beckons seductively. Turkeys have voted for Christmas, goodwill abounds and we all start to experience that special Yuletide glow.

But wait! All is not well. Is it the thought of having to spend Christmas with the family or eating brussel sprouts? No, it's far worse than that. For many employers, Santa won't bring tidings of joy, but a sack full of complaints. Yes, it's that time of year again - the Christmas party. And as the case reported on Page 4 shows, the 'Christmas do' continues to bring its fair share of problems.

It is a well-established principle that employers can be held liable for acts of discrimination or harassment at events which are held outside of work time where the nature of the event can be directly linked to work, e.g. the firm's Xmas party. But the case on Page 4 shows that problems can occur after the 'do' when partygoers remember or make assumptions about what happened.

In *Nixon v Ross Coates*, Ms Nixon and a male colleague, who were both drunk, were seen kissing at the end of the evening and leaving together to go to a hotel room. Weeks later, when it became known that Ms Nixon was pregnant, the HR manager, recollecting events on the night, made a suggestion to other staff about the paternity of the baby which was wrong. The EAT upheld Ms Nixon's claim that gossiping and spreading rumours about her pregnancy and about the father of the child amounted to pregnancy discrimination and sex-based harassment.

With the festive season approaching, the case serves as a very useful reminder that problems arising from Christmas 'do's' don't just relate to events on the night. Reminders about unacceptable behaviour should include not just conduct at the party, but also after the party relating to events on the night.

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### Commission publishes report: 'How fair is Britain?'

A report released by the Equality and Human Rights Commission (EHRC) paints a picture of a largely tolerant and open-minded society, in which some equality gaps have closed over the past generation, but also shows that other long-standing inequalities remain undiminished.

According to the EHRC, the 700 page report '[How fair Is Britain?](#)' is the most comprehensive compilation of evidence on discrimination and disadvantage ever compiled in Britain. It paints a picture of a largely tolerant and open-minded society, in which some equality gaps have closed over the past generation, but also shows that other long-standing inequalities remain undiminished and that new social and economic fault-lines are emerging as Britain becomes older and more ethnically and religiously diverse. The Review also identifies recession, public service reform, management of migration and technological change as major risk factors in progress towards a fairer society.



Key findings are: (i) that by the age of 22-24, 44% of Black people are not in education, employment or training, compared to fewer than 25% of White people; (ii) one in four Bangladeshi and Pakistani women work, compared with nearly three in four White British women; (iii) only 47% of Muslim men and 24% of Muslim women are employed; (iv) Pakistani and Bangladeshi men's earnings fall 13% and 21% below what might be expected, and Black African Christian and Chinese men experience pay penalties of 13% and 11%; (v) 50% of disabled adults are in work, compared to 79% of non-disabled adults.

### Largest ever recruitment guide for gay jobseekers

Stonewall has launched the sixth and biggest edition of Starting Out, Britain's lesbian, gay and bisexual recruitment guide. The guide, which includes 450 potential employers, is targeted at the 150,000 lesbian, gay and bisexual students in Britain as well as all discerning jobseekers and graduates.



Over 450 organisations from Stonewall's Diversity Champions programme are in [Starting Out](#). These major employers across public, private and third sectors have been included because Stonewall have assessed that these organisations know that people perform better when they can be themselves. So, to give job seekers a head start, the guide is aimed at helping lesbian, gay and bisexual (LGB) graduates, sixth formers and other job hunters to find work where their future bosses provide an inclusive environment. Stonewall point out that helping people to be open about who they are means that Diversity Champions attract, keep and develop the very best talent.

15,000 copies of Starting Out are being distributed to students' unions, university career services, employment agencies and university lesbian and gay societies and sixth forms across Britain. David Shields, Director of Workplace Programmes at Stonewall said 'Despite forecasts of doom and gloom in the job market, we've increased the number of employers featuring in Starting Out this year, all of whom are eager to recruit the very best in lesbian, gay and bisexual talent. Stonewall proves that creating a fully supportive and inclusive work environment makes sound business sense because people perform better when they can be themselves.'

## European Parliament votes for 20 weeks' full maternity pay

The European Parliament has agreed proposals to amend the Pregnant Workers Directive, which include an increase in the minimum period of maternity leave across the EU to 20 weeks on full pay. The proposals must be approved by the EU Council of Ministers before they can be adopted.

The European Commission published proposals in October 2008 to amend the Pregnant Workers Directive with a view to improving the common minimum maternity rights across all member states. On 20 October 2010 the EU Parliament agreed the following significant amendments to the Commission's proposals:

- Increase minimum maternity leave from 14 to 20 weeks
- Give women full pay for the minimum 20-week maternity leave period.
- Require member states to "take the necessary measures to prohibit" the dismissal of pregnant workers from the beginning of pregnancy until at least 6 months after the end of maternity leave and to ensure written reasons for dismissal during this period are given.
- Introduce two weeks' fully paid paternity leave for fathers.
- Remove obligations to perform night work or overtime: (i) on all pregnant workers during the last 10 weeks of pregnancy; (ii) on pregnant workers with health problems during the remainder of the pregnancy; and (iii) on breastfeeding mothers during the entire period of breastfeeding.
- Extend compulsory maternity leave from two to six weeks.



Under the legislative procedure, the EU Parliament's proposals will require a qualified majority of the Council of Ministers in order to be adopted. The Parliament's proposals go far beyond the Commission's original proposals. They are likely to have a significant impact in the UK and according to reports in the national press the UK Government is lobbying against some aspects.

## New employment programme for disabled people

As part of the Government's commitment to helping disabled people, Work Choice, an employment programme for those with severe disabilities, has been launched. The programme is expected to support around 23,000 severely disabled people each year.



[Work Choice](#) will operate via 28 contracts with Prime Providers. The programme is available on a voluntary basis, and open to anyone who meets the eligibility criteria. It will sit alongside the new Work Programme which becomes available early next year. Work Choice, which has been developed in close consultation with disability groups and disabled people, will greatly improve the effectiveness of current programmes by tailoring support to the needs of each person to help them find employment and then progress and stay in work.

Providers will also have the flexibility to agree with the customer what kind of support they need. This can include help with CV writing and applying for jobs. It can also progress to supporting people as they get used to going to work and will offer coaching in specific tasks as well as working with employers and co-workers to teach them how to adapt tasks so that a disabled person can continue to be employed.

## Agency Workers Regulations will not be amended

Following the announcement in July 2010 that the Agency Workers Regulations 2010 were under review due to various concerns in the business community, the Government has confirmed that it will not now be amending the Regulations before they come into force in October 2011.

The Agency Workers Regulations 2010, providing basic working and employment conditions for temporary workers that are no less favourable than if they had been recruited direct by the hirer after 12 weeks, were laid before Parliament in January 2010 under the Labour Government. In July 2010, the new Coalition Government announced that the Regulations were under review due to various concerns of the business community.

The Employment Relations Minister has announced, however, that the Government will not be amending the Regulations before their entry into force in October 2011. Despite considerable sympathy with proposals to simplify certain aspects of the Regulations the Government considers itself constrained by the "unique legal situation" created by the CBI/TUC agreement and any amendments made without the consent of both organisations could be subject to legal challenge. Guidance will be published in early 2011.

# BIS

## Pregnancy gossip unlawful

In *Nixon v Ross Coates Solicitors and another*, the EAT held that a tribunal had been wrong not to characterise gossip about an employee's pregnancy as discrimination and harassment under the Sex Discrimination Act 1975 (SDA). The tribunal had also been wrong to reduce compensation by 90% for contributory conduct because it thought the claimant had "irresponsibly" caused the gossip.

At the time of the Firm's Christmas party Ms Nixon did not know that she was pregnant as a result of a relationship with Mr Perrin, a solicitor Ross Coates. At the party, most people noticed Ms Nixon flirtatiously kissing the IT manager, Mr Wright. They left together. Ms Nixon said she was so drunk she did not know what was happening and did not know that sexual intercourse had taken place between herself and Mr Wright. Upon her return to work in January she told the managing partner, in confidence, that she was pregnant. However, Ms O'Hara, the HR manager found out and made a suggestion to other staff about the paternity of the baby. Ms Nixon claimed that Ms O'Hara had been gossiping and spreading rumours about her pregnancy and about the father of the child. She resigned.



The EAT agreed with the tribunal that Ms Nixon had constructively dismissed. But the tribunal had been wrong not to make findings of sex discrimination, pregnancy-related discrimination and harassment. The gossip was about the paternity of her child. It stemmed from the night of the Christmas party. It was connected with pregnancy. It was also unwanted conduct and met the definition of sex-based harassment under the SDA. The tribunal was also wrong to reduce the unfair dismissal compensatory award by 90% on the basis that Ms Nixon was almost exclusively the author of her own misfortune. The tribunal had not considered the issue of causation and the case would be remitted to the tribunal for it to re-consider compensation.