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Definitely not enjoying the 'fruits' of their labours

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When the Government introduced what they termed as "new anti-slavery laws" from 6 April under Section 71 of the Coroners and Justice Act 2009, some observers questioned whether this was really necessary. The new law is designed to protect vulnerable people such as migrant workers with little English or those unaware of their employment rights. It creates a criminal offence of holding another person in slavery or servitude, or requiring another person to perform forced or compulsory labour. It carries a maximum penalty of 14 years in prison.

On Page 3 we report a case involving two Polish fruit pickers who have been awarded a total of £25,000 by a tribunal who upheld their claims for race discrimination, dismissal for asserting a statutory right and unlawful deduction from wages. The claimants were represented by the Central Scotland Racial Equality Council (CSREC) and backed by the EHRC.

During the hearing, the Tribunal heard evidence about the horrendous conditions the workers were housed in during their time at the farm, sleeping in a converted metal container with no running water, and sharing twelve showers between almost 200 people. The workers were dismissed and subsequently escorted from the premises by police, after raising issues about pay discrepancies.

The tribunal said: "They were treated appallingly, without any common decency or respect." The CSREC described the treatment as "modern day slavery." When the Government introduced the new law it said that factors that may point to forced labour include the worker being compelled to remain in a particular area in poor accommodation and the employer not paying agreed wages. While what happened in this case may not be a criminal offence, sadly it seems we do need this type of protection to be made available in the UK, even in the 21st Century.

News in this Edition

Equality Bill receives Royal Assent to become the Equality Act

The Equality Bill received Royal Assent on 8 April to become the Equality Act 2010. The employment provisions are scheduled to come into force in October 2010. However, much will depend on the result of the General Election as to whether the timetable remains and whether all of the Act's provisions will be enacted.

After consideration of the House of Lords amendments by the Commons in the wash-up period prior to the dissolution of Parliament before the General Election, the Equality Bill received Royal Assent on 8 April 2010 to become the Equality Act 2010. The timetable for implementation published by the Labour Government allows for the implementation of the main employment provisions in October 2010, followed by the integrated public sector Equality Duty and the Socio-economic Duty in April 2011.

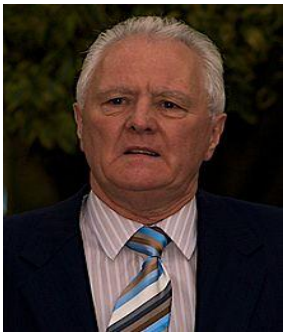
Equality Act 2010

Even though the Act has been published, the final provisions are still not certain, since a number of regulations need to be made to put 'flesh on the bones'. Whichever Government is elected, this means that we may have to wait sometime to be certain about the requirements of the new legislation, as Parliament will not return until 18 May and will not be open until the Queen's Speech on 25 May.

A further delay may result as a consequence of a statement in the Commons' debate in the wash-up period. Mark Harper MP, while reiterating the Conservative party's general support for the Act, made it quite clear that if the Conservatives form the next Government they will not bring into force the public sector socio-economic duty, the provisions designed to tackle equal pay and new rules on positive action.

Report criticises lack of diversity in financial institutions

The House of Commons Treasury Committee's new report, "Women in the City", criticises the lack of diversity in senior roles in financial institutions. With women only making up 9% of those on the boards of FTSE 100 banks, the report recommends a change in practice and, where necessary, culture.



John McFall
Chair of the Committee

The Treasury Committee report, "Women in the City", finds that in general women are in the minority at senior levels in financial institutions, especially at the top. The boards of FTSE 100 banks are only 9% female and the proportion of women executive directors is even lower at 1-2%. The Committee believe the lack of diversity on the boards of many, if not most, of our major financial institutions, may have heightened the problems of 'group-think' and made effective challenge and scrutiny of executive decisions less effective.

The Committee comment that while much of the legal framework that should support women has already been put in place, there are areas that may need strengthening. The challenge is not so much to change the law, but to change practice and, where necessary, culture. The onus is on the City to demonstrate that it is committed to improving the representation of women at senior levels within the industry. A quota system is not appropriate, but pressure should be brought to bear if the industry fails to act.

Knowledge of discrimination not required for award to be made

In T v XLN Telecom Ltd, the EAT held that a tribunal erred in assuming that it could not make an award for injury to feelings in respect of unlawful victimisation, if the victim was not aware there had been a discriminatory act.

A tribunal found that T's dismissal, supposedly on performance grounds, was actually victimisation on the ground of race as it was significantly influenced by the fact that T had raised a grievance about a manager's alleged racially offensive conduct. The tribunal made no award for injury to feelings, which T had claimed. It felt bound the Court of Appeal's (CA) comment in Skyrail Oceanic Ltd v Coleman 1981 ICR 864, that injury to feelings must result from the knowledge that there had been an act of discrimination. T's evidence was that what had really hurt him at the time was the employer's failure to follow the statutory dispute resolution procedures (then in force). Therefore, any hurt feelings did not arise from the knowledge that the dismissal was discriminatory.

The EAT upheld T's appeal. The ordinary principles in law in a claim for damages apply to the assessment of loss under the Race Relations Act 1976 (RRA). There is no requirement that the victim be aware of the wrongdoer's reasons for acting in the way they did. As to the Skyrail case, if injury to feelings could only be recovered if the claimant knew of the discriminatory act, then that would be a surprising exception to the usual legal principles for the recovery of damages. In any event, the comment in Skyrail about knowledge of the discriminatory act was a criticism of the tribunal's approach in that case and not the CA setting out a general principle of law.

Two Polish workers awarded a total of £25,000 in compensation

Two Polish workers have been awarded a total of £25,000 following a race discrimination claim case against a Perthshire fruit picking company. The Central Scotland Racial Equality Council (CSREC) described the treatment as 'modern day slavery', adding that the employer would not have dared treat Scottish people the same way.

Polish students Michal Obieglo and Tomasz Kowal lived on-site at the farm. There were discrepancies relating to rates of pay, underpayment of wages, incorrect payslips and incorrect deduction of tax. After Mr Obieglo and Mr Kowal approached the employer on behalf of their colleagues with their concerns and subsequently presented a petition with 145 signatories, they were dismissed, allegedly for stealing fruit. Following a strike by other workers, the employer re-instated Mr Obieglo and Mr Kowal, but when they turned up next day, they were met by police officers, escorted from the premises and their belongings withheld until they had bought a bus ticket to Edinburgh.

The tribunal upheld the Polish workers' claims for race discrimination, unfair dismissal for asserting a statutory right and unlawful deductions from wages. CSREC represented the claimants, backed by the EHRC. The CSREC described their clients' treatment as 'modern day slavery', adding that the employer would not have dared to treat Scottish people the same way, and that's why the tribunal had found race discrimination.

Long-running Coleman v Attridge Law case comes to an end

The long-running case between Sharon Coleman and Attridge Law, involving the issue of whether disability discrimination legislation extends to protecting those associated with a disabled person has now been settled, according to a press release from Cloisters.

Readers of this newsletter will be familiar with Sharon Coleman's case. She claimed she had been discriminated against, not because she is disabled, but because her son is disabled. When the preliminary jurisdiction issue was considered by the European Court of Justice, it ruled that EU law required that protection should be given to people associating with protected groups such as the disabled. The EAT then amended the Disability Discrimination Act so that the definition of direct discrimination included less favourable treatment of a person by reason of the disability of another person and the definition of harassment included unwanted conduct which relates to the disability of another person

Cloisters has reported that although the merits of the case were finally due to be heard in March, some 5 years after Sharon Coleman left the law firm, the parties finally reached terms of settlement. As part of the settlement, Attridge Law (now EBR Attridge) agreed to abandon any further appeals. Sharon Coleman will also receive an as yet undisclosed sum of money for 'injury to feelings'.

£400,000 damages for primary school head upheld

The Court of Appeal ruled that Erica Connor, the ex-head of a primary school, was entitled to £407,700 in damages awarded to her by the High Court when she was forced from her job after two Muslim governors tried to give Islam a greater presence in the school.

About 80% to 85% of the pupils at New Monument primary school are Muslim, of which approximately 64% are Pakistani Muslims, and the others are of various nationalities. Problems began in 2003 when two new Muslim governors were appointed. One governor allegedly tried to 'stir up' disaffection in the community against the school, including complaining about two teachers who he alleged, had evinced disrespect for the Koran and the Muslim religion. But a subsequent investigation revealed there was no case to answer. This was followed by a complaint about institutional racism being prevalent in the school, a petition calling for the head teacher's removal and offensive graffiti relating to Ms Connor appearing on the school walls.

Ms Connor stopped work due to stress and never returned. The Court of Appeal agreed with the High Court that Surrey County Council had failed in its duty of care to Ms Connor by failing to protect her against the actions of the two governors, who had an agenda to increase the role of the Muslim religion in the school, and which had placed Ms Connor under intolerable pressure. The £407,700 damages award was also upheld.

The Court acknowledged, however, that the Council found itself faced with the unenviable task of responding in an equitable fashion to an inequitable campaign designed to capture a secular state school for a particular faith.