



## All Inclusive

July 2011

### Tribunal statistics published for 2010/11

Statistics published by the Tribunals Service for the period from 1 April 2010 to 31 March 2011, show that the number of claims overall has decreased by 8% on the previous year, with a total of 218,100 claims in 2010/11, compared to 236,100 in 2009/10. Age discrimination claims rose by just over 30% and claims under the Part-time Workers Regulations rose by 200%.

The figures for 'equality' type claims in descending order are as follows (last year's figures in brackets): 1. Equal Pay = 34,600 (37,400); 2. Sex = 18,300 (18,200); 3. Disability = 7,200 (7,500); 4. Age = 6,800 (5,200); 5. Race = 5,000 (5,700); 6. Part Time Workers = 1,600 (530); 7. Religion or Belief = 880 (1,000); 8. Sexual Orientation = 640 (710). Separate figures were not published for claims under the Fixed-term Worker Regulations.

### CIPD updates guide on international culture

The Chartered Institute of Personnel and Development (CIPD) has revised its guide on international culture. The Guide highlights that when taking an international assignment, or working with people from other cultures, it is important that employees spend time understanding the nature of the culture in which they are going to operate, together with the people with whom they will interact, and how this needs to impact on their approach.

The [Guide](#) advises that Individuals should seek to broaden their awareness of cross cultural issues and be aware of the various traps they might fall into such as stereotyping and judging individual behaviour within their own cultural concepts. As the guide itself explores the dimensions and definitions of culture across a range of different nationalities it is useful tool in aiding organisations to create better awareness of diversity and respect for individuals and their cultures, whether working internationally or in the UK.

### New public sector equality duties

The Government has now laid the draft [Equality Act 2010 \(Specific Duties\) Regulations 2011](#) before Parliament. Public bodies have had to comply with the general public sector equality duty in S.149 of the Equality Act 2010 since April 2011. The specific regulations are intended to promote 'the better performance' of that duty.

The Regulations require a specified public authority to publish: (i) information demonstrating compliance with the S.149 general equality duty at least annually, including information relating to employees (but only where there are 150 employees or more), or other persons affected by its policies and practices, who share a relevant protected characteristic; and (ii) one or more specific and measurable equality objectives that it should achieve to comply with the S.149 equality duty, at least every four years.

Public authorities, other than educational institutions set out in Schedule 2, must publish relevant information demonstrating compliance by 31 January 2012, and their first equality objectives by 6 April 2012. Educational institutions must publish both their information and their equality objectives by 6 April 2012.

## **Employers need to manage older workers better**

The Chartered Institute of Personnel and Development (CIPD) has published a new survey demonstrating that older workers are often neglected when it comes to training and performance management.

[The Employee Outlook: Focus on an Ageing Workforce](#) survey of 2,000 employees finds that just 46% of those aged 65 and over report they have had a formal performance appraisal either once a year or more frequently, compared to 65% of all employees. In all, 44% of employees aged 65 and above have not had a formal performance appraisal in the last two years or never, compared to a survey average of 27%. Older workers are also much less likely than younger workers to have received training, with 51% of those aged over 65 saying they had received no training in the last three years or never, compared to 32% across all age groups.

## **Employer liable for third party harassment**

In *Sheffield City Council v Norouzi*, the EAT ruled that the Council was liable for acts of racial harassment carried out by a child in a care home against one of its employees because it knew harassment was occurring but failed to intervene.

Mr Norouzi is of Iranian origin and employed as a residential social worker in a home for troubled young children. One child was regularly offensive to him on racial grounds. She told him to go back to his own country and mocked and mimicked his accent. He became increasingly upset by her behaviour. Management were aware of the situation, but although one intervention took place, there were no further attempts to deal with the problem and the racist behaviour was allowed to persist.

A tribunal upheld Mr Norouzi's claim of harassment under the Race Relations Act, noting the High Court's decision in *R (Equal Opportunities Commission (EOC)) v Secretary of State for Trade and Industry* [2007] IRLR 327, which held that an employer could be held liable for sexual harassment where it knows there is a continuing course of third party harassment but does nothing to stop it. The EAT upheld the tribunal's decision. While the Council were not liable for the actions of children in its care, the principles in the EOC decision applied equally to racial harassment claims. The Council were liable, because they were aware of the racial abuse but had not done enough to protect Mr Norouzi.

## **Adjustment to selection criteria not reasonable**

In *Lancaster v TBWA Manchester*, the EAT held that the employer was not in breach of the duty to make reasonable adjustments for a disabled employee by not adjusting its redundancy selection criteria. The adjustments suggested were not reasonable, as they would not have prevented Mr Lancaster from being selected for redundancy.

Mr Lancaster suffers from a panic and social anxiety disorder and is disabled. He was a senior art director and was placed in a selection pool for redundancy, which included three criteria relating to communication skills. He received the lowest score and was made redundant. He lodged a disability claim arguing that the employer was in breach of its duty to make reasonable adjustments as: (i) the three communication skills criteria placed him at a substantial disadvantage and should have been removed; and (ii) in the alternative, all the redundancy selection criteria placed him at a substantial disadvantage because they were subjective and should have been replaced with objective criteria, such as attendance, disciplinary or absence record.

The tribunal dismissed Mr Lancaster's claim. The suggested adjustments were not reasonable. The removal of the communication skills criteria would still have resulted in Mr Lancaster receiving the lowest score and insufficient evidence existed to show that just using objective criteria could have prevented Mr Lancaster from finishing bottom in the selection pool. The EAT agreed. Removal of the three communications skills criteria would not have affected the order of the scores and replacing all of the redundancy selection criteria with purely objective criteria would not be a reasonable because the position of senior art director was a creative position at a senior level and, therefore, purely objective criteria might not have been sufficient.

The case emphasises that in determining whether it is reasonable to take a particular step to remove a substantial disadvantage to a disabled person, an assessment has to be made as to the extent to which taking the step would prevent that effect.