

## Is there such a thing as disability discrimination by association? – there may well be.

The Advocate General has handed down his opinion in the case of Coleman –v- Attridge Law and Steve Law.

Sharon Coleman worked as a legal secretary for a South London law firm. In 2002 she gave birth to a son who suffered from a disability. Following Ms Coleman’s return to work, she alleged that she was treated less favourably by her employer than other parents of non-disabled children. Ms Coleman alleged that her employer’s refusal to allow her to return to her original post, their refusal to allow her to change her working pattern, their criticism when she sought to take time off to care for her son and her employer’s threats of disciplinary action over her lateness all amounted to disability discrimination. As a result of the alleged discrimination Ms Coleman stated that she was forced to resign from her job and, as well as disability discrimination, claimed constructive unfair dismissal.

The Employment Tribunal referred to the matter to the European Court of Justice (“the ECJ”). The ECJ was asked to rule on the interpretation of the Equal Treatment Framework Directive (“the Directive”) to establish whether or not employees who are associated with a disabled person (such as a carer or parent) can claim protection under the Disability Discrimination Act 1995.

The Advocate General of the ECJ has very recently provided his reasoned opinion on the questions being asked. The Advocate General has stated that direct discrimination and/or harassment by association is prohibited by the Directive. In other words, in the case of discrimination by association with a disabled person, it is not necessary for the employee who is the object of discrimination to be disabled herself. Whilst the Advocate General’s opinion is only an opinion, the judges at the ECJ tend to follow the opinion in about 85% of cases.

If, as anticipated, the ECJ follows the Opinion of the Advocate General when it makes its final ruling later this year, it will be down to the UK courts to see whether they are able to interpret UK law in light of the expected Judgment or if the Disability Discrimination Act will need to be amended to ensure that it is compatible with the Directive.

This case could have a huge impact as the Directive applies not only to discrimination on the grounds of disability but also applies to religion or belief, age and sexual orientation.

If this is the case, employers could have a duty to make reasonable adjustments to an employee's working hours if the employee needs to care for a disabled person.

Watch this space for more news. If you have any questions regarding this alert, then please contact Sejal Raja or Lara Crane.

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If you would like any information on any of these or other employment matters, then please contact Sejal Raja ([sejal.raja@rlb-law.com](mailto:sejal.raja@rlb-law.com)) or Lara Crane ([lara.crane@rlb-law.com](mailto:lara.crane@rlb-law.com)) or telephone on 020 7222 7040.

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.