

New Year's employment resolutions for 2004

CORPORATE

By the time you read this, it will probably be towards the end of January, but, on the basis that it is never too late for good resolutions, here are some thoughts for resolutions in 2004. So here we go

I resolve to:-

- Review contracts of employment and staff handbook to ensure that changes in the Employment Equality (Sexual Orientation) Regulations and Employment Equality (Religion and Belief) Regulations which are now in force, are taken into account.
- Remember that the weekly cap for pay in the calculation of redundancy payments and the basic award for compensation for unfair dismissal goes up from £260 per week to £270 per week with effect from 1st February 2004.
- Watch out for changes in regulations relating to employment agencies (expected early 2004) so as to ensure that we do not pay a fee to an agency if we take on a temp as a permanent member of staff, unless such fee is permitted under the new regulations.
- Keep up to date on disability discrimination issues, even if I am a small employer as the exemption for small businesses of less than 15 employees is due to be removed in October.
- To stay awake if there is yet another consultation paper on TUPE (Transfer of Undertakings Regulations) and, equally, not become over-excited if changes are introduced but remember that the most significant area of change is probably

going to be that pension rights, will, in part, be covered under TUPE on a transfer of a business.

- To set time aside (probably in September) to review grievance and disciplinary procedures in light of Government regulations which should have been published in final form by then, covering statutory minimum procedures which will apply from October, bearing in mind that dismissal costs could be increased if proper procedures are not followed.
- Set aside time (probably in November) to analyse the likelihood of staff requesting an "information and consultation body" in April 2005 and analyse whether management would be facilitated by your company introducing its own information and consultation processes now.

And last, but not least, turn to page 3 and put down the dates of RadcliffesLeBrasseur's workshop and seminar dates in your diary now.

If you have any questions about these resolutions please contact sejal.raja@rlb-law.com

Discrimination on the grounds of sexual orientation, religion or belief

It is now unlawful to discriminate against workers because of sexual orientation or religion or belief as a result of the Employment Equality (Sexual Orientation) Regulations and Employment Equality (Religion and Belief) Regulations which came into force at the beginning of December 2003. This article sets out some of the key principles employers need to be aware of to avoid falling foul of the Regulations as well as asking some questions to illustrate the complexities which could arise in this new area of law.

Summary of the Regulations' provisions

Both sets of Regulations apply to all employment and vocational training (there are specific provisions for schools and institutions of higher and further education) and include recruitment, terms and conditions, promotions, transfers and dismissals. They make it unlawful on the grounds of sexual orientation or religion or belief to:

- treat anyone less favourably because of their religion or belief or their actual or perceived sexual orientation;
- apply a criterion, provision or practice which disadvantages individuals of a particular sexual orientation, religion or belief - unless it can be objectively justified;
- subject someone to harassment;
- victimise someone because they have made or intend to make a complaint or allegation or have given or intend to give evidence in relation to a complaint of discrimination;
- discriminate against someone, in certain circumstances, after the working relationship has ended.

Any questions arising out of this article?
Contact kerry.scott-patel@rlb-law.com

Sexual orientation

The Regulations afford protection to heterosexuals, gay men, lesbians and bisexuals.

There is now a statutory definition of harassment which is *unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them having regard to all the circumstances including the perception of the victim*.

Such conduct will include nicknames, teasing and name calling and other behaviour which may not be malicious but which is upsetting to the individual concerned. This may make it difficult for employers to realise that harassment has or is occurring. For example, we were presented with a situation prior to these Regulations coming into force where a Muslim employee complained that he found a colleague wearing a crucifix offensive. Would this now amount to harassment under the Regulations? Would asking the colleague to cover up or not wear the crucifix also be discrimination?

Harassment extends to cover conduct about the sexual orientation (real or perceived) of those people with whom the individual associates, for example, where a worker is teased about his brother's sexuality. Employees should also be aware that telling jokes, for example, about gay men could constitute harassment even if there are no gay men present when the joke is told.

The Regulations acknowledge that sometimes it will be lawful to treat an individual differently if it is a *genuine occupational requirement (GOR)* that the job holder is of a particular sexual orientation. To be able to rely on this provision an employer will need to consider the nature of the work and the context in which it is carried out. One example could be where a business provides tourism services to a country where gay sex is illegal and therefore may be able to prove that there is a GOR for not appointing a lesbian, gay or bisexual employee who would need to work in that particular country. Different treatment is also permitted in certain circumstances where the employment is for the purposes of an organised religion.

Employers need to be wary of discriminating against workers once they have left the organisation, for example, by refusing to give a reference for an employee who was not accepted by her colleagues because she is a lesbian. There is no specific time limit after the termination of employment to which the Regulations will apply.

Religion or belief

As is clear from the summary above, many of the concepts in these Regulations are identical to those in the sexual orientation regulations. In addition, the definition of harassment is the same, there is a GOR defence and the regulations extend to give workers protection after the termination of their employment.

The Regulations define religion or belief as “any religion, religious belief or similar philosophical belief” and it will be for the Employment Tribunal and the courts to decide what particular circumstances are covered by the Regulations. Whilst political beliefs are stated as falling outside the definition how will this work in practice? What about fundamental Muslims who want to introduce Shiite law – where will the distinction between religion and politics be drawn? Could communism be a philosophical belief as well as or instead of a political belief?

When using the defence of a GOR, an organisation may be able to show that the organisation is founded on an ethos based on a religion or belief and that it is a requirement of the job to adhere to the ethos and proportionate to apply the requirement. However, employers must be careful not to apply a “blanket” GOR to all posts as they will need to show that the GOR is reasonable when considering the nature of the job and the context within which it is carried out. Accordingly where a GOR may be proportionate for a teacher at a Hindu school could you apply the same GOR when recruiting for the post of school caretaker?

Remedies

Individuals can claim in the Employment Tribunal or County Court if they feel that they

Recognition at last

We're pleased to report that we are now rated in the Legal500 (a directory of law firms) as having “sound employment services”. In fact, we achieved our first entry last year but didn't notice at the time. Does anyone actually read these directories other than lawyers themselves?

have been discriminated against on the grounds of sexual orientation, religion or belief. The Court or Tribunal has the power to award compensation (which is not capped) to the individual and order specific steps to be taken to reduce the adverse effect. A failure to implement those steps may lead to the Tribunal increasing the compensation award.

Actions employers should be taking in view of the Regulations

- Up-dating or implementing a robust Equality Policy which includes all forms of discrimination.
- Providing equality training to employees about what constitutes discrimination and how it should be dealt with in the workplace – it is no good having a policy if no-one knows about it.
- Ensuring that there are clear guidelines for staff to follow if they feel they have been discriminated against, harassed or victimised.
- Making employees aware that they could be personally liable for discrimination arising out of harassment and that it constitutes a disciplinary offence.
- Ensuring there are processes to ensure confidentiality of procedures and processing of information and reassuring staff that this is the case.
- Checking existing dress codes and holiday procedures for potential discrimination against a particular religion or belief.
- Reviewing job adverts with a GOR to ensure it is a genuine GOR and ensuring those involved with recruitment are aware of the Regulations.
- Checking whether any pension scheme offered to employees falls foul of the Regulations, in particular in the area of pensions for partners of a deceased employee.

Workshop/seminar news

Dates for your diary

The Senior Executive – 18 February 2004

Disability Discrimination – 10 June 2004

Disciplinary Processes – 16 September 2004

Annual Seminar – 11 November 2004

For further details of events please contact sejal.raja@rlb-law.com



Meet the team

Lara Crane, Assistant Solicitor in our Employment team, closes our series of interviews by answering a few questions put by Robert O'Donovan

R: Why did you decide to become an employment lawyer?

L: Employment law is one of the fastest growing areas of law – I am therefore kept on my toes and my working day is very interesting – no two days are the same! I enjoy the analysis of the law and how it interplays with human relationships.

R: How does RadcliffesLeBrasseur's culture compare with that of Nat West?

L: After working at Nat West for 6 years after my A-levels, I decided to re-train as a solicitor. I therefore threw away my calculator and headed off to university. I have not regretted the decision at all and can safely say I love my new career. Having said that, whilst I was at the Bank, life appeared a lot more leisurely, or perhaps that's just my memory playing tricks on me! One stark difference between the two is the importance that the Firm places on good client relationships. We realise that it is a competitive market and consequently we realise how important it is to ensure our clients are content and confident with our advice.

R: What do you give back to society?

L: The Firm takes part in a Pro-Bono scheme whereby we provide free legal advice at an advice centre in the Clapham area. I and some of our trainee solicitors attend once a month. The centre is there for people who cannot afford access to legal advice. We never know who will be walking through the door and consequently the range of advice varies enormously. It is hugely rewarding, although on a cold and wet November evening the trek back from south London to Hertfordshire where I live can be a pain – although not enough to put me off attending!

R: What is the best piece of advice anyone has ever given you?

L: To specialise in an area of law which you really enjoy. Fortunately I am doing just that.

R: What do you do to relax after a hard day's work?

L: Go for a short run followed by a long glass of wine!

R: What is your most memorable day in your career?

L: Attending the Law Society's formal admission of solicitors' ceremony, when it dawned on me that 8 years of studying [and the associated debts] were really worth all the effort.

WHAT NEXT?

This interview with Lara ends our series of interviews. Interesting how many of us have either worked outside private practice or in other areas of law. In future issues, we are thinking of running a legal agony aunt column, so if you have any questions that have always been puzzling you but you didn't want to pay to ask, write in now to Robert O'Donovan at 5 Great College Street, London SW1P 3SJ or email him at robert.o'donovan@rlb-law.com. Sorry, but if you need an urgent answer and/or want to rely on it, then you will have to instruct us in the normal way.

If you require any further information regarding the issues mentioned in this bulletin please contact Robert O'Donovan or Sejal Raja.

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