

LATEST DEVELOPMENTS IN DISCRIMINATION LAW

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Forstater revisited

- **Discrimination on grounds of gender critical belief**
- **Remedy has been announced**
- **£105,000**
- **Loss of earnings**
- **Loss of earning capacity**
- **Upper middle Vento**
- **Aggravated damages**



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The 2023 *Vento* bands

From 6/4/23

- Lower band of £1,100 to £11,200
- A middle band of £11,200 to £33,700
- An upper band of £33,700 to £56,200
- The most exceptional cases capable of exceeding £56,200



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Religion and belief

- Ethical veganism as a Protected Characteristic?
- Overlap with Covid-19 and vaccines
- *Owen v Willow Tower Opco 1 Ltd*



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More on Gender Critical beliefs...

- All staff email about expression of GC beliefs
- “Petition” follow-up; CEO remarks
- Was it harassment?
- *Fahmy v Arts Council England*
- Now settled
- Confirms *Forstater* is here to stay



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New research: intersectionality

- *McKinsey Institute for Black Economic Mobility*
- 66% employers had high female representation
- 50% employers had high ethnic-minority representation
- Only 17% had both



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Harassment: perception

- C learned of comments made about him by colleagues, as part of B&H investigation
- Whether C could be harassed whilst unaware of comments
- Perception = key
- Reasonableness given B&H allegations
- *Greasley-Adams v Royal Mail Group Ltd*



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Harassment: New Legislation

- **Protection from Sex-Based Harassment in Public Act 2023**
- **Adds new s.4B to POA 86 re: intentional harassment to add basis of sex**
- **NB s.4A applies to public AND private unless a dwelling = work?**
- **SI to be published as usual...**



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Harassment: New Legislation (2)

- **The Worker Protection (Amendment of Equality Act 2010) Act 2023**
- **A duty on employers to protect against sexual harassment**
- **No third-party duty**



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Menopause

McCabe v Selazar Ltd (ET) 2021

- CEO comments “Calm down...don’t let the hormones get out of control”
- Other evidence
- Age a reason for Claimant’s dismissal



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Menopause (2)

Merchant v BT plc (ET) 2012

- Claimant provided GP letter saying she was “going through the menopause which can affect her level of concentration at times”
- Claimant dismissed for poor performance
- ET: Employer would not have adopted this “bizarre and irrational approach” with other “non-female related conditions”



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Genuine Occupational Requirements

- Carer for physically disabled woman is male
- Use of female carer?
- Whether GOR applies?
- Proportionality
- *Donnelly v PQ*



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Disability - s.15 EA - “something arising”

- C has dyslexia, Asperger’s, hearing loss
- “Meltdowns” at work
- Whether “something arising”
- *McQueen v General Optical Council*



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Disability - sickness absence

- C long-term sick
- Whether justified?
- Proportionate means of achieving a legitimate aim
- *McAllister v Revenue and Customs Commissioners*



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ANY QUESTIONS?

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