

# The LA employment alert!

JANUARY 2009

IN THIS ISSUE:

## Discrimination - Religious and sexual orientation

Plus:

- Working time opt out
- Flexible working
- Client profile:  
Winterhalter UK Ltd

The Employment Alert is intended to assist you in identifying potential problems which should ring alarm bells and on which you should seek specific advice. It is not intended to be an exhaustive statement of the law or a substitute for seeking specific advice. LA is regulated by the Solicitors Regulation Authority. A list of members is available on request.

 LesterAldridge LLP

0870 224 0405  
info@LA-law.com  
www.lesteraldridge.com

Bournemouth Southampton London

LEM009/09/LA/LLP

 LesterAldridge LLP



It is not direct discrimination to treat all employees in precisely the same way.

# Religious Discrimination & same-sex couples

This is a fascinating case in which the EAT had to consider a conflict between the religious and sexual orientation discrimination laws.

Registrar Lillian Ladele brought a claim of religious discrimination against her employer, Islington Council, in relation to disciplinary action the Council took against her as a result of her refusal to conduct civil partnership ceremonies for same sex couples because of her (Christian) religious beliefs.

The Employment Tribunal found that the Council should have

accommodated her beliefs and it was guilty of direct and indirect religious discrimination.

Islington Council appealed to the EAT - they won.

## Direct Discrimination

The EAT said that there had not been any direct discrimination. Ms Ladele's complaint was not that she had been treated differently from other Registrars

but that she had been treated the same when, in fact, she wanted to be treated differently. It cannot be direct discrimination to treat all employees in precisely the same way.

## Indirect Discrimination

The EAT went on to say that neither had there been any indirect discrimination. It is worth quoting from the judgment.



*"In our judgment, the Tribunal wrongly applied the proportionality test. The focus should be on whether the means adopted are a proportionate way of achieving a legitimate aim.*

*In our judgment, the council was entitled to adopt the position it did. Once it is accepted that the aim of providing the service on a non-discriminatory basis was legitimate - and in truth it was bound to be - then in our view it must follow that the council were entitled to require all registrars to perform the full range of services.*

*They were entitled in these circumstances to say that the claimant could not pick and choose what duties she would perform depending upon whether they were in accordance with her religious views, at least in circumstances where her personal stance involved discrimination on grounds of sexual orientation.*

*We think they were entitled not to agree to make an exception for the claimant. They were not required to connive in what they perceived to be unacceptable*

*discriminatory behaviour by relieving the claimant of these duties. They were entitled to adopt as an objective an unambiguous commitment to the non-discriminatory provision of services by all staff who in the normal course of events, would be required to carry out those services. It would necessarily undermine that objective to make an exception for the claimant. Accordingly, their refusal to accommodate the religious belief of the claimant did not in our judgment involve unlawful indirect discrimination."*

## Muslim employees and alcohol

Mr Ahmed brought a claim of indirect religious discrimination against Tesco Stores Limited.

Mr Ahmed was a warehouseman and was required to handle alcohol.

He raised a grievance and later claimed constructive dismissal on the basis that handling alcohol offended his religious beliefs as a Muslim.

Tesco did not challenge whether Muslims in general were put at a disadvantage by the requirement to handle alcohol, they accepted that they were.

The Tribunal just looked therefore at the question of justification.

They found that supplying stores with alcohol was a legitimate aim and that it was not possible to maintain supplies without requiring employees such as Mr Ahmed to handle alcohol. Requiring Mr Ahmed to handle alcohol was, therefore, a proportionate means of achieving that legitimate aim.

**Note – Although Tesco (for whatever reason) did not challenge whether Muslims in general were put at a disadvantage by a requirement to handle alcohol, it does not necessarily follow that such a requirement will be discriminatory.**



## Homophobic “banter”

Let’s return to a case we mentioned in an earlier Alert. This case recently went to the Court of Appeal.

In *English v Thomas Sanderson Limited* the Court of Appeal held that “homophobic banter” could be harassment under the Sexual Orientation Regulations even where the victim was not gay, the perpetrators did not believe him to be gay, and he knew that they did not believe him to be gay.

Not surprisingly, the Court took the view that the repeated use of the word “faggot” amounted to harassment on the grounds of sexual orientation, regardless of the victim’s true sexual orientation or the harassers’ perception of it.

## Have you heard the one about the Muslim employee, the headscarf and the £75,000 compensation payment?

No? Well read on.

In truth, this is not the legal profession’s finest moment.

Saleca Parkar, a Muslim legal assistant in a law firm in Birmingham, recently settled her claims of race, sex and religious discrimination for £75,000 shortly before the Employment Tribunal hearing was due to start.

Apparently one of the partners in the firm referred to her in an e-mail as “tent ‘ead” and “Mother Teresa” – presumably, a witty reference to her head scarf. Who said lawyers don’t have a sense of humour?

The same partner also referred to her as “lazy” because she refused to stand on a stool to do some filing - when she was pregnant.

You couldn’t make it up.

Contact us:



01202 786310

rayner.jones@LA-law.com

www.lesteraldridge.com

# Working hours update



**“There was doubt as to whether the change would proceed”**

## Extension of right to request flexible working – confirmed!

The Government has confirmed that the proposed extension of the right to request flexible working to parents of children up to the age of 16 will be implemented in April 2009, as planned.

There had been some doubt as to whether the change would proceed following comments by Lord Mandelson in late 2008 along the lines that the Government was considering delaying this – and a number of other measures – because of the economic downturn.

## Hallelujah! Working Time Opt Out to continue

Surely some mistake?

Hasn’t the European Parliament voted to end the opt-out from the maximum 48-hour working week?

Yes. But, the Government will now enter negotiations with the European Council of Ministers to prevent the opt-out from being scrapped.

What is the most likely outcome?

The discussions will reach an impasse and the opt-out will survive.

As our client base continues to grow in other areas of the country, we examine an innovative and progressive company based in Buckinghamshire.



Winterhalter UK Ltd is an organisation located in Milton Keynes. They are a subsidiary of the German parent, Winterhalter Gastronom.

The company distributes glass and dishwashers to the commercial catering trade.

The company currently trades with some of the leading high street pub, restaurant and hotel chains; Whitbread, Pizza Express, Zizzi, ASK and Wagamama to name but a few. In short, if food is being served, it is likely that it will be a Winterhalter product washing the dirty glasses or crockery.

Winterhalter can also claim to have its products in places like Downing Street and Windsor Castle as well as supplying some of the country's leading chefs like Oliver and Torode.

They employ about 50 staff in their Milton Keynes head office and a further 60 technicians and engineers on the road, who service Winterhalter's customer base across the UK.

Winterhalter began life in Southern Germany in 1957 where it was founded by Karl Winterhalter. The company quickly established itself as a specialist, but also market leader, in commercial dishwashing in the

food service industry.

Now the company employs 900 people worldwide and group sales are set to reach €175m for 2008.

Winterhalter has been trading in the UK since 1966 (an irony not lost between the UK and German HQ) and moved to Milton Keynes in 2000. The UK subsidiary is responsible for the administration, sales, marketing and distribution of the Winterhalter brand. It is supported by a service and chemical division.

**What about the future?** David Smithson, CEO of Winterhalter UK, comments "We estimate that

our products both from a technological and innovative point of view, are about 2-3 years ahead of our competitors. R&D plays a huge role in keeping us ahead and Winterhalter is a company that listens to its customers and their needs."

There is a huge amount of technology that sits behind a glass or dishwasher to ensure optimal wash results for Winterhalter's customers. But Winterhalter has gone further and anticipated a shift in market attitudes and economies.

Smithson continues "There is not a meeting that I have attended in the last 6-9 months where the issue of utility costs has not been discussed."

The nature of warewashing is reliant on the two basic utilities of water and electricity, and contributes significantly to kitchen running costs. Winterhalter's ground breaking, premium warewashers are actually helping commercial kitchens save money – literally thousands of pounds in operating costs.

Smithson points to Winterhalter's

new range of Energy+ machines and comments "Our new range of machines, extract the energy contained in the waste water and steam, converts it into power and uses it to heat the fresh, incoming water. The process is complex but extremely effective and we anticipate that on average we can save customers £1200 per annum in running costs".

"Our strategy over the next 5 years will be to develop this technology further and employ other technologies as standard, that will save resources and save costs. We will increasingly work with more and more of our national accounts, who can have several thousand sites around the UK, helping them to embrace this technology and the benefits to the environment and their business. We are already working with the Carbon Trust to get this technology recognized, something that will accelerate acceptance of our revolutionary products."

**And David Smithson's advice to budding entrepreneurs?** Plan, prioritise and analyse. Smithson's experience spans several decades in the catering

industry including time as a chef. "I planned and prioritised. I didn't always have time to analyse and sometimes that would cost me. Learning that lesson in the heat of the kitchen has remained with me throughout my working life.

When pushed further about his mantra, Smithson reveals a pearl of wisdom that most of us can identify with; time. "We all complain we don't have enough hours in the day to do what we want, personally or professionally. I always think, if you leave it a day, it becomes a week, leave it a week, it becomes a month. It's about getting things done. You can never assume you have enough time, you haven't".

But David turns to the final part of his mantra as perhaps the most valuable. Smithson explains "You can be a go-getter, an achiever and be the best planner in the world, there is an underlying certainty that you will make mistakes or get something wrong. If you get up and move on without assessing where you have gone wrong, then you are setting yourself up for another failure."