



The Changing Face of the Law – Recruitment and the Equality Act

Anthony Collins
solicitors



Matthew Wort

matthew.wort@anthonycollins.com

0121 214 3501

Anthony Collins
solicitors

Occupational requirements

■ Anti-discrimination laws

- Religion/belief
- Sexual orientation
- Sex
- Gender re-assignment
- Marriage/divorce

Occupational requirements

- Religion/belief
- Sexual orientation/sex/gender re-assignment/marriage/divorce

Religion/Belief

- Ethos based on religion/belief
- Having regard to ethos + job or context
- Occupational requirement
- Legitimate aim
- OR is proportionate means of achieving

Religious ethos OR in practice

- Sheridan v Prospects for People with Learning Disabilities
 - Religious ethos was accepted
 - Blanket recruitment policy was criticised
 - No GOR for support level workers
 - Detriment to require manager to adhere to unlawful policy
 - Unlawful discrimination and constructive dismissal

ORs in practice

- Muhammed –v- Leprosy Mission International
- GOR established for Finance Administrator
- Context, not nature of role – daily acts of worship & prayer

Ethos

■ Meaning

- Fundamental character/spirit
- Moral element determining someone's action
- Underlying sentiment informing beliefs, customs or practices of group

Evidencing ethos

- On paper
- In practice

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Job

- Tasks
- Skills & experience

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Context

- Background
- Contacts
- Aims
- Methods

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Requirement

■ Not preference

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Legitimate aim

- Why?

- Legitimate

- Not mere prejudice
- Not just on cost grounds

Proportionate

- Means need to be in proportion to the ends
 - How does OR achieve aim?
 - Could it be done differently?
 - What is impact of OR on employee?
 - What is impact of doing it differently?
 - What is impact of no OR?

Other strands

- Employment for purposes of organised religion
- Requirement to comply with doctrine
- Requirement to avoid conflict with strongly held religious convictions of significant number of religion's followers

Organised religion ORs in practice

- Reaney v Hereford Diocesan Board of Finance
 - Church Youth Worker job was for purposes of organised religion
 - Non conflict/Strongly held beliefs test met
 - But not reasonable to say Reaney didn't meet OR
 - No indirect discrimination defence argued

Organised religion

- Not religious organisation
- Job must directly promote/further religion
- Examples
 - Minister of religion - ✓
 - Youth worker - ?
 - Finance administrator - X

Compliance with doctrine

■ Evidence?

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Non-conflict provisions

■ Evidence?

- Religious convictions
- Strongly held
- Significant number
- Religion's followers

Workbook

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Pre Employment Health Questions

- Prohibited before offering work with exceptions. Note:
 - Work widely defined
 - Carry out a function that is intrinsic
- No stand alone claim
 - Shift in burden of proof

Scenarios

1. You would like to ask pre employment health questions for a pilot who is going to live in a new environment. Can you ask pre employment health questions? What might be appropriate?

Scenarios

2. You would like to ask pre employment health questions for a mission worker planning to work in a remote area of Africa away from immediate and qualified medical support. Is this allowed? If so, what type of questions might be appropriate?

Questions

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