

Employment news - spring: Harassment on grounds of sexual orientation

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CATEGORY:
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Harassment on grounds of sexual orientation

Whilst the Employment Equality (Sexual Orientation) Regulations 2003 prohibit discrimination, victimisation and harassment in the workplace by reason of sexual orientation, case law and our experience shows there is uncertainty in the law. What protection do the Regulations afford to employees in the three scenarios set out below?

Where the employee is gay but not known to be gay

In *Brooks v Findlay Industries UK Ltd*, the claimant was a gay man who kept his sexual orientation hidden from his colleagues. Colleagues started spreading rumours that he was gay, culminating in open taunts and the disclosure of his confidential contact details which referred to his male partner. The employer was found liable for discrimination and harassment on grounds of sexual orientation.

Where the employee is known not to be gay

In the recent case of *English v Thomas Sanderson Blinds Ltd*, Mr English was a heterosexual man. He claimed his colleagues had subjected him to sexual innuendo for attending boarding school and living in Brighton. His claim for harassment under the Regulations failed because he accepted that although his colleagues may have perceived him to have 'gay' characteristics, they did not actually perceive him to be gay. It was held that although the homophobic banter was unacceptable, it was just a 'vehicle for teasing' Mr English and was not based on his colleagues' perception or incorrect assumption that he was in fact gay. On that basis, the unwanted conduct was not 'on grounds of' sexual orientation.

Where the employee is known not to be gay but is nonetheless party to offensive comments about a gay family member

The effect of *English* above is not entirely satisfactory if the point of the Regulations is to prevent homophobic remarks being bandied around the workplace. The government might address this issue as part of the Discrimination Law Review, of which further details will be published later this year. In cases where an employee is known not to be gay but is teased about having, for example, a family member who is gay, the employee would be likely to have a claim for sexual orientation discrimination.