

# Employment ACT NOW



A guide to employment law from

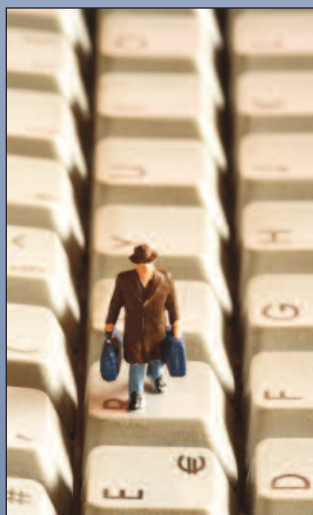
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## DISABILITY DISCRIMINATION BY ASSOCIATION – COMPLYING WITH EU LAW

SPRING 2010  
IN BRIEF

COMING SOON – FINES FOR  
BREACHES OF THE DATA  
PROTECTION PRINCIPLES

The Government has published a proposal to give the Information Commissioner's Office (ICO) the power to levy fines up to a maximum penalty of £500,000 for serious breaches of the eight principles in the Data Protection Act 1998. Draft guidance showing the criteria the ICO intends to use, and the circumstances it will take into account when issuing penalties, can be found at <http://www.ico.gov.uk/>.



**The Employment Appeal Tribunal (EAT) has handed down a far-reaching judgment in the long-running case of Coleman v Attridge Law, which concerns the interpretation of the EU Equal Treatment Framework Directive and its impact on disability legislation in the UK.**

The wording of the Disability Discrimination Act 1995 (DDA), which implements the Directive in the UK, is such that it protects disabled employees but does not appear to afford protection to an employee who is discriminated against because he or she has caring responsibility for a disabled person. Sharon Coleman contended that she had been discriminated against on the grounds of her son's disability. She claimed that the effect of the Equal Treatment Directive was to outlaw 'associative discrimination' and it was open to the Employment Tribunal (ET) to construe the DDA accordingly.

The ET referred the question to the European Court of Justice (ECJ), which ruled that where an employer treats a non-disabled employee with caring responsibility for a disabled child less favourably because of the child's disability, this is contrary to the prohibition of direct discrimination laid down in the Directive. Likewise, the Directive also protects the employee from unwanted conduct amounting to harassment that is related to the disability of the employee's child.

The EAT has now ruled that the DDA can be interpreted so as to apply to adverse treatment by reason of the disability of another person. To give effect to the ECJ's



decision, Mr Justice Underhill would add words to Section 3A of the DDA to the effect that 'a person also directly discriminates against a person if he treats him less favourably than he treats or would treat another person by reason of the disability of another person'. Likewise, words should be added to Section 3B so that the DDA protects an employee from harassment for a reason which relates to the disability of another person. The case was remitted to the ET to consider the merits of Ms Coleman's claim. **Contact us for advice on any aspect of discrimination law.**

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## EQUAL TREATMENT FOR AGENCY WORKERS

**The Government has said that legislation implementing the EU 'Agency Workers Directive' will not be introduced in the UK until 1 October 2011.**

The effect of the Agency Workers Regulations will be to provide equal treatment for temporary agency workers, compared with permanent workers, in terms of basic working and employment conditions (including pay, holidays, working time, rest periods and maternity leave).

Agency workers in the UK will acquire these rights once they have been in a job for 12 weeks.

Other benefits that agency workers will gain from the first day of their assignment include:

- information about vacancies so that they have the same opportunity as other workers to find permanent employment;
- equal access to on-site facilities, such as child care and transport services; and
- improved rights to protect the health

and safety of new and expectant mothers, including the right to reasonable time off work

to attend ante-natal appointments and adjustments to working conditions and working hours.

## ANNUAL CHANGES IN TRIBUNAL AWARDS

**The Employment Rights (Revision of Limits) Order 2009, which details the annual inflation-linked changes in limits on the compensation amounts which can be awarded by employment tribunals, was made on 10 December 2009 and applies where the appropriate date falls on or after 1 February 2010.**

Under the Employment Relations Act 1999, if the Retail Prices Index (RPI) for September of a year is higher or lower than the RPI for the previous September, the Secretary of State is required to change the limits. As there was a decrease of 1.4 per cent in the RPI from September 2008 to September 2009, this is reflected in the revised compensation limits.

The main changes are:

- the maximum compensatory award



for unfair dismissal decreases from £66,200 to £65,300; and

- the limit on the amount of guarantee payment payable to an employee in respect of any day decreases from £21.50 to £21.20.

The maximum amount for a week's pay for calculating statutory redundancy pay and various other tribunal awards remains at £380.

## IN BRIEF

### GUIDANCE ON PREVENTING WORKPLACE HARASSMENT AND VIOLENCE

New guidance giving practical advice to businesses and employees on preventing workplace harassment and violence has been published following collaboration

between the Government and employers, trade unions and other relevant agencies. As well as raising awareness of the issues, it provides employers, workers and their representatives with ways of identifying, preventing and managing problems of harassment and all forms of violence at work.

### EHRC GUIDANCE FOR EMPLOYERS ON FLEXIBLE WORKING

The Equality and Human Rights Commission has published new guidance entitled 'Working Better: A Manager's Guide to Flexible Working'. This aims to help business managers implement innovative

working methods that also improve productivity and customer service, save money and enable employees to balance their work and personal lives.

The guidance can be found at [http://www.equalityhumanrights.com/uploaded\\_files/Employers/flexbetterworkingguide.pdf](http://www.equalityhumanrights.com/uploaded_files/Employers/flexbetterworkingguide.pdf).

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