



HR Alert

Halliwells' Electronic Alert from the Human Resources Group

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Associated Discrimination Rights

The Advocate General's opinion in *Coleman -v- Attridge Law and Law* is that associated discrimination is unlawful under the provisions of the European Directive that prohibits discriminatory conduct.

There should be no real surprise at this conclusion. The European Directive at the centre of this case provides protection from discrimination "on grounds of religion or belief, disability, age or sexual orientation". The language "on grounds of" is the same as that used in the *Employment Equality (Sexual Orientation) Regs 2003* and the *Employment Equality (Religion and Belief) Regs 2003*. It has been fully accepted that both these sets of Regulations provide protection to those associated with the protected group. Similarly, the *Race Relations Act 1976* uses the terminology "on racial grounds", and this has been interpreted as covering associative discrimination.

The *Disability Discrimination Act 1995* has been challenged in this case as it restricts the prohibition to less favourable treatment "for a reason which relates to the disabled person's disability" and "on the ground of the disabled person's disability". The Advocate General's opinion is that like the other Regulations it should cover associated discrimination.

It is not surprising as the Advocate General points out that directly targeting a person who has a particular characteristic is not the only way of discriminating

against him or her and that "one way of undermining the dignity and autonomy of people who belong to a certain group is to target not them, but third persons who are closely associated with them and do not themselves belong to the group".

The consequences, if the European Court of Justice follows this opinion, have been widely reported as giving new rights to carers who ask to work flexibly in order to care for disabled relatives. However in practice the extension of protection to persons associated with those with disabilities may not benefit employees who want to change their hours or other working arrangements. This is due to the fact that the case relates to direct discrimination and harassment **not** the duty to make reasonable adjustments. The duty to make adjustments stands apart from the general protection against discrimination under the Directive, and is, under the Directive, expressly limited to "persons with disabilities".

The difference for carers will be that they will be protected against harassment or less favourable treatment in comparison to any other employee because of their association with a disabled person.



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