

Race and sex discrimination and illegal workers

It is a criminal offence for employers to take on staff who are working illegally in the UK. This sets a gaping trap for the unwary employer to find itself up against a claim of race discrimination. This information sheet outlines these provisions and looks at some important concepts in the law on race and sex discrimination.

Criminal offence of employing illegal workers

From 27 January 1997, it became a criminal offence to employ someone who is not entitled to work in Britain. The maximum fine for guilty employers is £5,000. However, employers can protect themselves by incorporating some simple steps into their recruitment procedure.

Even if they inadvertently take on an illegal worker, employers will not be guilty if they copied or, if appropriate, kept documentation showing that the person had the right to work in Britain.

Employers need not fear that they are necessarily expected to decipher complex legal documents. A standard document showing the job applicant's National Insurance number will do. This can be a P45, payslip from a previous employer, P60 or NINO card. Check that the document appears to relate to the job applicant. Unless you actually know that the person is not entitled to work, you will then be protected.

If the job applicant does not have a document showing his or her National Insurance Number, other documents can also show a right to work such as a passport describing the holder as a British citizen or having the right of abode in the UK. Documents showing temporary

National Insurance numbers will not do. For help with documents, employers can phone a Government helpline on 0208 649 7878.

Employers should note that they do not have to check the right to work of employees whom they employed before 27 January 1997, although they will commit an offence if they know that any existing employee is not entitled to work.

Beware of race discrimination

What employers must not do is treat job applicants with "foreign" names or of an ethnic minority any differently than other job applicants. If they do, they could face a claim for race discrimination. The best way to ensure that they do not discriminate is to ask all applicants for proof of entitlement to work at the same stage in the recruitment process.

Employer's liability for conduct of employees

It is well established law that an employer is liable for discrimination suffered by an employee at work either from the employer directly or from fellow employees.

This idea was developed in the case of Raymondo Jones, a 16 year old of mixed race background, who was employed by Tower Boot Company. He was subjected to physical abuse and racial name calling by two of his colleagues.

Tower Boot Company argued that it was not responsible for its employees' actions because it did not employ workers to racially harass their colleagues. However, the Court of Appeal found that the company had to pay compensation to Mr Jones

Head Office

3 Lonsdale Gardens
Tunbridge Wells
Kent TN1 1NX
T 01892 510000
F 01892 549884

Thames Gateway

The Old Rectory
St. Mary's Road
Greenhithe
Kent DA9 9AS
T 01322 623700
F 01322 623701

Race and sex discrimination and illegal workers (continued)

because an employer is responsible for discriminatory actions of its employees to their colleagues whether or not the employer knew what was happening or approved of it.

Employers are clearly liable for any racial harassment of employees by their colleagues which could have been prevented if they had put in place good employment practices. This also applies to sexual harassment.

Employers liable for sexual harassment at work-related social events

It has also been established that employers can be liable for sexual or racial harassment by employees of their colleagues at work-related social events, such as an after work drink or a leaving party.

In one case, a female police officer complained of two incidents. In the first, she went to a pub after work with three colleagues, one of whom pulled his stool close to hers, flicked her hair from her shoulder and rearranged her collar in an intimate manner. On the second occasion, the officer was attending a colleague's leaving party. A male colleague said to her "F***** H*** you look worth one. Maybe I shouldn't say that it would be worth some money".

The Tribunal decided that both incidents constituted sex discrimination and happened "in the course of employment in the broad sense" because going to a pub after work or a leaving party is an extension of work. It would have been different if the incidents had taken place in a chance meeting in the supermarket. The officer's

employer was, therefore, liable for the sexual harassment.

Employers should, therefore, bear in mind that their liability does not end when staff leave the office.

Employers liable for racial harassment by customers

Following another case, employers must not only guard against racial harassment by fellow employees but also by any clients and customers with whom the employee comes into contact whilst doing his job.

In the "Bernard Manning case", Mr Manning made racially offensive remarks at a Round Table function held in a hotel. Two Afro-Caribbean waitresses heard the remarks and became the object of Mr Manning's "jokes". Some of the guests also abused the waitresses. Later, the hotel duty manager apologised to the waitresses for the guests' behaviour and offered to move them away from the firing line. The manager also wrote to them apologising.

This, though, was not enough. The tribunal found that the hotel should have removed the waitresses from the room as soon as the offensive remarks started. Employers must not allow staff to be harassed, either racially or sexually, in circumstances in which they have sufficient control to prevent or reduce the harassment. Employers can usually control whether harassment takes place or not and they should use good employment practice to prevent it.

An employer's defence

If employers are accused of allowing racial or sexual harassment of their staff, either by

Race and sex discrimination and illegal workers (continued)

fellow employees or customers, they can defend the action by showing that they took all steps that were reasonably practical to prevent the discrimination. The key, then, is good employment practice.

Practical steps which employers can take to avoid claims of discrimination

- 1 Draw up an equal opportunities policy and publicise it to all staff.
- 2 Put the policy into practice through management involvement and training. (In the complaint brought by the police officer described above, the tribunal identified that the police force was liable largely because it had failed to provide adequate equal opportunities training).
- 3 Make it clear in disciplinary procedures that racial and sexual harassment and discrimination will result in serious disciplinary steps being taken.
- 4 Introduce a procedure by which employees who have been subject to harassment can seek help.
- 5 Ensure that criteria for selecting job applicants and choosing existing employees for training, promotion and transfer relate only to the relevant job requirements.
- 6 Require evidence of right to work from all job applicants at the same stage in the recruitment procedure.
- 7 Review your procedures to check that they are working.

Although this information sheet highlights some key issues relating to race and sex discrimination, it should not be considered comprehensive and is not a substitute for seeking professional advice on specific issue.

For further information contact Nick Hobden on 01892 510000 or by e-mail at nick.hobden@ts-p.co.uk