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HUMAN RIGHTS AND WRONGS

By Nicholas Robertson

Recently a fireman was reported to have been awarded compensation after his right to freedom of expression under the Human Rights Act was breached by his employer. This article explains the impact of human rights on UK employment law and identifies areas where the HR professional should bear the legislation in mind.

It is unlawful for public sector employers to act contrary to the European Convention on Human Rights. For private sector employers there is no direct duty but English courts must interpret English legislation to comply with the Convention, so far as possible. Many human rights are unlikely to be encountered in practice by HR managers, or will add nothing to the way in which employers are already expected to treat employees. For example, Article 9 gives the right to freedom of religion but HR managers will be experienced in handling religious sensitivities at work, under English anti-discrimination legislation.

The right to freedom of expression (Article 10) could add to existing employee rights. For example, existing whistle blowing legislation protects an employee who raises a complaint with their manager, alleging failure by the employer to comply with a legal obligation. It is necessary to comply with various statutory requirements to come within the whistle blowing legislation. Article 10 expands those rights. The fireman was not raising a complaint with his manager but was asking colleagues if they were suffering because of a new chair.

Dismissal of an employee who is felt to be obstructive to the employer could be positioned by an employee as a breach of Article 10 even if whistle blowing legislation did not apply.

Article 10 could also be relevant to dress codes at work or behaviour outside work which the employer disliked. An employee who wore a white band at work (indicating support for Make Poverty History campaign) would find it difficult to categorise any dismissal for breach of dress code as discriminatory under English law, but could claim unfair dismissal for infringement of Article 10. An employee dismissed for protesting on behalf of Fathers for Justice in his own time could argue that such actions fell within the right to self expression.

HR professionals are used to dealing with data protection legislation but Article 8 (the right to privacy) goes further. In one case the employer authorised private detectives to follow an individual suspected of timesheet irregularities to see if he visited the sites at the times he claimed. The court acknowledged that Article 8 was relevant but held that the interference with the right to privacy was justified given the employer's suspicions, which were reasonably held. In another case the employer's suspicions were "whimsical" and the invasion of privacy was unjustified.

Article 6 gives individuals a right to a fair trial when determining civil rights. There have been three very recent cases in this area, and it is



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likely to be a key issue for HR. An employee may now have the right to independent legal representation in an internal disciplinary hearing where the employee's livelihood is at risk, because dismissal would rule the employee out of that job market altogether. An HR professional faced with a request from an employee to permit a lawyer to attend a disciplinary hearing should avoid a blanket response dismissing the request on the grounds it is not envisaged by the internal disciplinary policy. Instead the response should consider the potential impact of any dismissal.

An HR professional who is aware that an employee's human rights may be relevant is already halfway to addressing the issue. Employers are far more likely to get it wrong if they are unaware of the potential claims that can be raised. Additionally, Articles 6, 8 and 10 are all qualified rights. For example, the right to freedom of expression needs to take account of the rights of other employees who may be affected by what is being said/done. The right to privacy can be qualified for the prevention of crime (which was relevant in the timesheet case). Therefore, an HR manager, aware of potential human rights issues should take into account those rights, and crucially, any qualifications to these rights specified in the Human Rights Act.