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Employment Legal Alert

Discrimination by association

The European Court of Justice has delivered an important decision on disability discrimination law and the scope of the protection it provides. Specifically, it has ruled that European law protects not only people who are disabled themselves but also those who are closely associated with a disabled person. For example, someone who is the parent or carer of a disabled person.

The case involves an employee, Sharon Coleman, who is not disabled herself but is the primary carer for her disabled son. She sued her employer under the UK's Disability Discrimination Act ("DDA"), claiming that she had been treated less favourably on grounds of her son's disability. She alleged various forms of adverse treatment by her employer including a refusal to allow her flexible working hours, threatened disciplinary action for arriving late to work for reasons that related to her son's condition, refusal of time off to look after her child and abusive comments made about her and her child.

It was not clear to the UK court whether the Equal Treatment Directive, which the DDA implements for the purpose of disability discrimination, covers "discrimination by association". The ECJ has ruled that it does, so the case will now return to the UK for a decision on Ms Coleman's claim. One issue to be decided is whether the DDA will now have to be amended to take account of the ECJ's ruling, given that the case was argued in the ECJ on a more narrow basis than we would have expected. What is not clear as a result is the extent to which employers shall be allowed to justify their treatment of such employees. There has already been a lot of press comment on the potential impact of this decision and not all of it has been accurate. We anticipate that, when the UK court makes its decision, some clarification will be provided.

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What is clear, however, is that employers will now need to consider their obligations under the DDA when dealing not only with employees who are themselves disabled but also those who have caring responsibilities for disabled people. Most employers will probably want to be sympathetic to their employees who are in a similar position to Ms Coleman. In these circumstances, and pending clarification of the legal position, employers would be well advised to treat any request from an employee in a similar position to adjust their working conditions as a request for reasonable adjustments under the DDA.

We will be monitoring the progress of the Coleman case after it returns to the UK courts and will report further on the final decision reached. Should you have any immediate queries on the way in which this may impact your business, please contact the London Employment Group.