

## UK: EMPLOYMENT UPDATE

In our first Briefing of the year we consider the implications of a tribunal decision that ethical veganism is a protected characteristic under the Equality Act 2010 and take a look at what employment law changes employers should prepare for and what they may be consulted on during the course of this year.

### Key issues

- Ethical Veganism is protected under the Equality Act
- The year ahead: what's in store?

### Ethical Veganism is protected under the Equality Act

With 'Veganuary' well underway the recent decision of an employment tribunal that the claimant's 'ethical veganism' is a belief that qualifies for protection under the Equality Act 2010 (EqA) is timely; but how significant is this decision?

The EqA provides protection against direct and indirect discrimination and harassment of individuals with certain 'protected' characteristics. Religion or belief is one of the nine protected characteristics; the EqA states that belief means any religious or philosophical belief but does not elaborate any further. Case law (now enshrined in the EHRC Employment Code) has provided further guidance that a belief will qualify for protection if it:

- is genuinely held;
- is not simply an opinion or viewpoint based on the present state of information available;
- concerns a weighty and substantial aspect of human life and behaviour;
- attains a certain level of cogency, seriousness, cohesion and importance; and
- is worthy of respect in a democratic society, is not incompatible with human dignity and is not in conflict with the fundamental rights of others.

In the case before the tribunal, C claimed that he had been dismissed by his employer, an animal welfare charity, after he blew the whistle to his colleagues that their pension fund was being invested in companies involved in animal testing.

C pursues the philosophy of 'ethical veganism' which informs his daily existence; this includes not eating animal products and not travelling by bus to avoid accidental crashes with insects or birds. In summary, C claimed that his

dismissal amounted to direct discrimination on the grounds of his belief and that it was also automatically unfair because he had blown the whistle.

The tribunal held that C's ethical veganism did meet the criteria to qualify as a belief that was protected by the EqA. It was, however, only a preliminary hearing to address that specific issue; it did not determine whether the reason for C's dismissal was his belief, his protected disclosure, his misconduct or something else.

It should also be noted that this decision is not binding on other employment tribunals. Each case must be determined on its own facts; the reasons for becoming vegan can be varied in nature (for example for taste, environmental or weight management reasons, concerns over antibiotics, staying on trend or a belief in the sanctity of life) and individual approaches may vary in practice. If an individual is inconsistent in the way in which they manifest their veganism this may suggest to an employment tribunal that it is not a belief worthy of protection. Equally a tribunal may consider that being a vegan for weight management reasons is not a belief that concerns a weighty (no pun intended) and substantial aspect of human life and behaviour.

That said, employers should be mindful that this case has been widely reported and is likely to cause many employees to believe that veganism is a protected characteristic under the EqA. Clearly it is inadvisable to treat an employee less favourably because of their veganism but perhaps more of an issue is the question of indirect discrimination. Employees may complain that the employer operates provisions, criteria or practices (PCP's) that put vegans at a particular disadvantage (compared to non-vegan employees) and therefore amount to indirect discrimination on the grounds of belief. For example, requiring employees to wear uniforms made from animal products or not providing vegan food in staff canteens. Of course indirect discrimination can be justified if the employer can demonstrate that the PCP complained of is a proportionate means of achieving a legitimate aim.

Should employers assume that vegetarians in their workforce are also potentially protected by the EqA? In the case of *Conisbee v Crossley Farms Ltd* (reported in September last year) an employment tribunal case held that vegetarianism was not a belief capable of protection under the EqA. One of the reasons given for this conclusion was that vegetarianism could not be a cogent or coherent belief because different people are vegetarian for different reasons, including lifestyle, health, diet, concern about the way animals are reared for food and personal taste.

Employers should not necessarily take comfort from this decision that vegetarians are not protected under the EqA; it too was not a binding decision and each case will be decided on its own facts.

Employers may wish to take a pre-emptive approach and identify aspects of the workplace that could put vegan (and possibly vegetarian) employees at a particular disadvantage and assess whether there are alternative options that might reduce or remove the disadvantage. Alternatively employers may consider it more practical to address any issues as they are raised on a case by case basis.

*[Casamitjana v League Against Cruel Sports]*

## **2020: What's in store?**

The year ahead will almost certainly have a number of surprises in store; the intention to pass an Employment Bill addressing workers' rights post Brexit has been flagged but what it will address remains to be seen. The timetable

for other legislative changes is however clearer. Below we set out some of the changes employers should prepare for.

What?	When?
<p><b>National Minimum Wage rates:</b></p> <ul style="list-style-type: none"> <li>will increase from £7.70/hr to £8.20/hr for 21–24 year olds;</li> <li>will increase from £6.15/hr to £6.45/hr for 18–20 year olds;</li> <li>will increase from £4.35/hr to £4.55/hr for under 18s; and</li> <li>will increase from £3.90/hr to £4.15/hr for apprentices.</li> </ul>	[1] April 2020
<p><b>NIC's on termination payments:</b> Will be payable by employers on termination payments in excess of £30,000. Employee NIC's will not be payable.</p>	6 April 2020
<p><b>Domestic works councils:</b> The trigger threshold requiring employers to set up information and consultation arrangements (domestic works councils) reduces to a request from 2% of employees (from 10%) subject to the existing requirement that at least 15 employees make the request.</p>	6 April 2020
<p><b>Holiday pay calculations:</b> The reference period for calculating an average week's pay in order to calculate statutory holiday pay will increase from 12 weeks to 52 weeks, or the number of complete weeks for which the worker has been employed.</p>	6 April 2020
<p><b>Section 1 statements of terms and conditions:</b> The written statement employment particulars ('s1 Statement') must be provided to all workers (not just employees) on/before the first day of employment, rather than within the first two months. The s1 Statement must also include new information including:</p> <ul style="list-style-type: none"> <li>any terms and conditions relating to any paid leave (other than holiday or sick leave) e.g. maternity/shared parental leave/ jury leave etc;</li> <li>any other benefits not covered elsewhere in the s1 Statement – both contractual and non-contractual;</li> <li>details of: any training entitlement provided by the employer, any part of that training entitlement which is compulsory and particulars of any other compulsory training which the employer will not pay for.</li> </ul>	6 April 2020

Also potentially on the horizon this year:

- A consultation on draft legislation addressing the use of confidentiality clauses (or NDA's as they are sometimes referred to);
- A consultation on a statutory code of practice on the use of confidentiality clauses; and
- A consultation on extending maternity leaver's protection against dismissal and changing time limits for pregnancy discrimination and harassment claims more generally.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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