

## **Employment Appeal Tribunal decision in Coleman v EBR Attridge Law LLP and Steven Law**

Anthony Sakrouge, who represented Steven Law, comments on the Employment Appeal Tribunal decision in *Coleman v EBR Attridge Law LLP and Steven Law*, the case which established that the Disability Discrimination Act applies not only to discrimination on the grounds of a disability held by an employee, but also to discrimination on the grounds of someone else's disability (usually referred to as "associative discrimination").

**Anthony Sakrouge:** *"The Claimant in this case was a secretary in a law firm who was not disabled herself, but who argued that she had been discriminated against on the basis of her son's disability. She claimed the firm had subjected her to the following less favourable treatment compared to other employees whose children were not disabled: not permitting her to return to her previous post, criticising her when she sought to take time off to care for her child, threatening disciplinary action over lateness, refusing to allow her to work from home when her child required an operation and subjecting her to offensive comments. The Employment Appeal Tribunal was asked to consider the question of whether the Disability Discrimination Act should be interpreted to cover associative discrimination, despite the fact that this was clearly inconsistent both with the wording of this Act and with Parliament's intention.*

*The relevant case law made it clear that U.K. law should only be interpreted in a way that was consistent with the interpretation of the underlying European Directive (under which it had become clear that associative discrimination was protected) if the interpretation went "with the grain of the legislation" and involved a difference only in degree, rather than in kind. Nevertheless, the Employment Appeal Tribunal went much further than merely adding a few words to assist in the interpretation of the Disability Discrimination Act.*

*The underlying case was settled before the Court of Appeal could consider whether the Employment Appeal Tribunal's approach was correct. This ruling may now lead to difficulties in the period before the Equality Act comes into force (which is currently expected to be in October 2010) because, although much of the commentary since this decision has focused on the desirability of associative disability discrimination being protected against, as was put forward in the arguments developed by counsel, on a strict reading of the Employment Appeal Tribunal's re-drafted wording:*

- 1. A person without a disability can now claim disability discrimination arguing that he has been treated less favourably than someone who is disabled;*
- 2. The person claiming disability discrimination does not even need to show any association with a disabled person (merely that he has been discriminated against "by reason of the disability of another person");*

3. *A person claiming harassment can do so if the reason for the conduct complained of relates to another person's disability (again, whether or not he has any association with that disabled person). An employee could therefore theoretically claim harassment under the Disability Discrimination Act because his employer had made a series of offensive comments about an unconnected disabled person, without even having to prove that the disabled person in question had a disability (as has always previously been necessary under the Disability Discrimination Act).*

*We can therefore expect some interesting case law to come out of this decision”.*

Anthony Sakrouge instructed Adam Solomon of Littleton Chambers in relation to the abovementioned appeal to the Employment Appeal Tribunal and the proposed appeal to the Court of Appeal before the underlying claim was settled.

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June 2010