

UPDATE

Can discrimination take place against a company?

Update prepared by Rachel Guthrie (Counsel, Guernsey)

Although the Channel Islands previously lagged behind other jurisdictions in guaranteeing protection against discrimination, it has made and continues to make some welcome steps in the right direction. This update provides further detail on those steps.

The Discrimination (Jersey) Law 2013 (the **Discrimination Law**) was adopted in 2013 and came into force on 1 September 2014. The Discrimination Law initially only prohibited discrimination on the grounds of race, however, since 1 September 2015 it has applied to sex, sexual orientation, gender reassignment, pregnancy and maternity (see our update on [Age Discrimination](#)). By way of contrast, the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 (the Sex Discrimination Ordinance) was adopted in 2005 and came into force on 1 March 2006. The Sex Discrimination Ordinance protects against discrimination on the grounds of sex, marital status and gender reassignment.

Both the Discrimination Law and the Sex Discrimination Ordinance make it unlawful to discriminate against a person. Following a recent ruling in the English Employment Appeal Tribunal (**EAT**), would it be possible for a company to bring a claim for unlawful discrimination?

The recent UK EAT decision in *EAD Solicitors LLP v Abrams* considered the concept of discrimination being perpetrated against a company. In this instance, Mr Abrams was a member of a limited liability partnership. He set up a limited company of which he was the sole director and shareholder. It was the company therefore that was the member of the partnership. It had been agreed that Mr Abrams was to retire at the age of 62. When Mr Abrams reached this age, EAD Solicitors LLP objected to Mr Abrams providing his services through the company and the arrangement came to an end.

Mr Abrams and the company commenced discrimination proceedings on the grounds of age (discrimination on the grounds of age is not currently prohibited in Jersey or Guernsey, however, protection is expected in Jersey later this year).

The EAT held that a company could proceed with a discrimination claim. The EAT held that under the Equality Act 2010, discrimination must take place against a person; however, 'person' is not defined. The EAT looked to the definition in the Interpretation Act 1978 which provides that person includes a body of persons corporate or unincorporate. It has long been accepted that the discriminator could be a corporation and therefore the EAT did not see any reason why the discrimination could not be perpetrated against a company.

So would the Discrimination Law and the Sex Discrimination Ordinance be interpreted in the same way? Only time will tell!

However, this judgment is an important and influential development and could have wide ramifications for businesses in the Channel Islands in both the employment and, in Jersey, the non-employment context. Based on this judgment, a company may be able to bring a discrimination claim where it is treated less favourably by association with a protected characteristic. This might be interesting, for example, where a client company claims discrimination in the provision of goods or services.

Contacts



Rachel Guthrie
Counsel
Guernsey
+44 1481 739 395
rachel.guthrie@mourantozannes.com

This update is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this update, please get in touch with one of your usual contacts. © 2018 MOURANT OZANNES ALL RIGHTS RESERVED