

DANGERS OF TAKING IMAGE AT FACE VALUE

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Employers have the right to set dress codes for their employees, but they need to take care that these do not discriminate against certain religious groups

The Equality Act 2006 altered the definition of “religion or belief” to cover any religious or philosophical belief – including the lack of either. This change has extended the categories of employees protected by the Employment Equality (Religion or Belief) Regulations 2003, which made it unlawful to discriminate directly or indirectly on the grounds of religion or belief.

Before these regulations came into effect, employees would sometimes frame claims for religious discrimination as race claims. This created inconsistency. Only those religious groups whose members were seen as belonging to a racial or ethnic group qualified for protection. The recent case of **Harris v NKL Automotive Ltd and Matrix Consultancy Ltd** (UKEAT 0134/07) is interesting because the employer conceded, and the EAT did not question, that Rastafarianism was a religious belief within the 2003 Regulations. The case confirms that, while it can be legitimate for employers to have dress codes or provide employees with guidance on their appearance, each

case will be determined on its facts. So if an employer causes employees to behave in a way that is contrary to their religious or philosophical beliefs, this may amount to direct or indirect religious discrimination.

Harris had been recruited via an employment agency, Matrix Consultancy Limited, to work as a driver for NKL Automotive Ltd. The company required employees to have a “smart professional haircut” and “ensure that hair is tidy”.

Harris alleged that he had been unfairly dismissed and discriminated against contrary to the 2003 regulations, on the grounds that he was a Rastafarian. He complained that he was not allocated work when other drivers were and, unlike some of the other drivers, was not taken on as a full-time employee. The company had complained to the agency that Harris’s hair was untidy and that he did not represent the company well.

Harris signed off sick with stress. The agency, which did not provide sick pay, ended his engagement, enabling him to claim benefits instead. Harris took this to constitute dismissal from the company. He raised a grievance, making reference to his long hair, but not that he had suffered discrimination because his hair was in dreadlocks.

Harris initially appeared to frame his complaint on the grounds of sex discrimination, arguing that a woman with hair the same length as his would not have been discriminated against. This allegation was then dropped and the claim of religious discrimination made instead.

The employment tribunal rejected a claim for direct discrimination on the grounds that the company did not know of his religious beliefs and could not have directly discriminated against him. The EAT agreed.

In relation to indirect discrimination, the EAT found that the company did not necessarily object to dreadlocks and that the requirement to “ensure that hair is tidy” did not discriminate against employees with dreadlocks, as these could be kept tidy. The case was sent back to the tribunal to consider a claim of victimisation only.

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KEY POINTS

- A dress code requiring employees to act against their religious beliefs risks being indirectly discriminatory, although it may be possible for an employer to objectively justify such a code.
- Most religious observances can be accommodated in the workplace and employers should be reasonable in their approach to dress.
- An employee who loses a claim for direct or indirect discrimination, but can show that they were treated less favourably than other people after making the allegations, might still bring a successful claim of victimisation.

FURTHER INFO

The CIPD has developed two recognised employment law qualifications for all those providing support or guidance in this area. www.cipd.co.uk/law/cipdqualifications
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