

Will "Discrimination by Association" ruling open the floodgates to further litigation?

In January 2008 a South London Employment Tribunal referred to the European Court of Justice the question of whether equal treatment in employment prohibits discrimination where an employee is treated less favourably than her colleagues because, although not herself disabled, she is associated with a disabled person. In response to the case, *Coleman v Attridge Law*, a landmark ruling was returned by the European Court of Justice on July 17th 2008 in favour of the claimant, Mrs Coleman.

Mrs Sharon Coleman, a legal secretary at Attridge Law, is not disabled but has a disabled son. She tried to take time off to care for him, but was subjected to hostile treatment by her employer. She alleged that among other things her employer branded her as 'lazy' said she was using her child to manipulate her working conditions and refused to give her the same working flexibility as colleagues with non-disabled children. She claimed disability discrimination on the basis that she was associated with a disabled person (her son).

The underlying principle to allow discrimination by association significantly broadens not just disability discrimination rights, but also age discrimination rights.

The ruling may also have far reaching implications for flexible working requests. It may have opened the floodgates to a myriad of employment practice liability claims.

It is for this reason that the Employment Practice Liability (EPL) insurance market is growing in the UK. Richard Hearn, Business Accounts Manager at Capita CARE comments: "European anti-discrimination directives have had the effect of focusing the mind. Some Directors and Officers policies will not cover the entity, or claims for personal injury such as claims for mental anguish".

Capita CARE is pleased to announce that EPL cover will be incorporated into our Corporate Care Home scheme, underwritten by Ecclesiastical Insurance. From August 1st 2008, all policyholders will receive cover as standard at time of renewal. If you wish to discuss EPL cover in more detail please contact Richard Hearn on **Freephone 0800 328 7213**.



Uproar regarding forthcoming changes to Employers' Liability Law

The government's plans to change the law, meaning companies no longer have to retain employers' liability insurance records for 40 years, have caused uproar. The government faces extremely stiff opposition from personal injury lawyers, trade unions and asbestos victims.

Regulations to retain employers' liability insurance contracts for forty years were introduced eight years ago as a result of pressure from claimants who were unable to trace an insurer due to inadequate record keeping. The Employers' Liability (Compulsory Insurance) Regulations 1998 currently require an employer to retain a copy of the certificate for 40 years and display one or more copies of current certification at each place of business, "reasonably protected" from being defaced or damaged. The government is to change regulation regarding the way current certificates are stored.

As of October 1st 2008 companies are obliged to make the current certificate available in electronic form and ensure that

each employee to whom it relates has reasonable access to it. Certificates therefore may move from the staff kitchen to the intranet.

All eligible businesses will still have to hold employers' liability cover and would risk a penalty of £2,500 for every day without cover. The Department of Work and Pensions is currently in consultation with stakeholders about the new regulations and the issues it raises regarding the tracing of historic liability insurance policies.

The introduction of the new regulations have prompted criticism of the government for its manic determination to reduce the administration burden on business by 25%. We keep all our clients updated on all relevant regulatory changes regarding insurance as they come in to force. If you have any comments relating to this article please email on **info@capitacare.co.uk**