

Disability Discrimination by Association

A landmark case which could give new rights to millions of carers in the UK has been reviewed by the Advocate-General and could have huge implications to employers.

Sharon Coleman, who has a disabled son, claims that she had been discriminated against because she is the primary carer of her disabled son. Ms Coleman claims she was subjected to discriminatory treatment which included being called “lazy” for wanting time off to care for her son and also being refused to have the same flexible working arrangements as her colleagues with non-disabled children.

The Disability Discrimination Act 1995 only covers discrimination against ‘a disabled person’ whilst the Framework Employment Directive prohibits discrimination ‘on the grounds of religion or belief, disability, age or sexual orientation. The Disability Discrimination Act (Amendments) 2003 were brought into force to implement the changes required by the Framework, but did not extend the definition beyond discrimination against a disabled person. Ms Coleman has argued at an Employment Tribunal that the Framework covers discrimination by association, and therefore, the Disability Discrimination Act should also cover this. This question was referred by the Employment Tribunal to the European Court of Justice (ECJ).

The Advocate-General has given his opinion in advance to the ECJ ruling and has said that the Framework **does** cover direct discrimination and harassment against an employee on the ground of his or her association with a disabled person. Indeed he went on to say “one way of undermining the dignity and autonomy of people... is to target not them, but third persons who are closely associated with them”.

This could have a significant impact as the Advocate-General has suggested that the same principles would equally apply to direct discrimination or harassment, by association, on grounds of age, religion or belief or sexual orientation.

The outcome of this could lead to sweeping changes to the UK’s discrimination legislation and could lead to more claims against employers of a similar nature and so robust equality and diversity policies could become even more important in avoiding discrimination in the workplace. This case also highlights the importance of objective and transparent decision making by employers when deciding whether or not to allow requests for flexible working from employees.

Whilst the Advocate-General’s opinion is not binding, it is often followed by the ECJ and a decision from the ECJ is expected in late 2008. Employers up and down the country will be eagerly awaiting their decision.

If you wish to discuss this further with our HR Consultancy team please call 01332 295 544 or email [Clare Johnson on clarej@cooperparry.com](mailto:clarej@cooperparry.com).