

## **Advocate General Opinion - Disability Discrimination Act should protect those associated with a disabled person**

The employment related provisions of the Disability Discrimination Act 1995 (“DDA”) make it unlawful for an employer to treat a disabled person less favourably. The DDA should be interpreted, wherever possible, to ensure that it doesn’t conflict with EC Directive 2000/78 - the “Framework Employment Directive”.

In the case of *Coleman v Attridge Law*, the Advocate General sitting in the European Court of Justice (ECJ) expressed his Opinion that EC Directive 2000/78 should be interpreted as protecting those who, although not themselves disabled, nevertheless suffer discrimination or harassment in the field of employment owing to their association with a disabled person.

Miss Coleman is not disabled herself, but cares for her disabled son. When she sought to take time off work to care for her son, she was called “lazy” and accused of attempting to manipulate her working conditions. Miss Coleman brought claims under the DDA 1995, arguing that she had suffered discrimination by association with her son’s disability. On the face of it the wording of the DDA does not cover such discrimination, as the DDA states that an employer must not treat a disabled person less favourably for a reason which relates “to the disabled person’s disability”. However the EC Directive arguably suggests that it should cover discrimination by association.

The Advocate General said that the Directive protects against discrimination “on the grounds of” disability. It is therefore not necessary for someone who is the object of discrimination to have been mistreated on account of “her disability”. It is enough if she was mistreated on account of “disability”.

Although the reference was limited to the issue of “disability”, the Advocate General also indicated that the principle of discrimination by association should apply to all anti-discrimination legislation, namely sex, race, religion or belief, disability, age or sexual orientation.

The Opinion is not binding on the ECJ, which is expected to rule on this matter later in the year. If the Opinion is endorsed by the full Court, it will be for the employment tribunal to determine whether the DDA can be interpreted in such a way as to give effect to the Directive, thus protecting people like Miss Coleman. The same will apply to equivalent claims under sex and age discrimination legislation, for example. In the end the Government may need to change the relevant legislation if necessary to bring it in line with the Directive.

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