



Diversity Inclusive

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February 2007

Diversity news from around the World

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In this edition

- The Social Security Benefits Up-rating Order 2007 has been published, setting out the new rates of statutory maternity, paternity and adoption pay, which will rise from £108.85 to £112.75 per week from 1 April 2007.
- The CIPD have published a flexible working toolkit to assist its members in critically examining the way flexible working operates in their organisations, improve the clarity of everyone's role in operating flexible working arrangements and to ensure that flexible working benefits the business, employees and customers alike.
- Stonewall has published its annual Workplace Equality Index, showcasing the UK's top 100 employers for gay people. Top 2007 employer is IBM. In second place is last year's winner, Staffordshire Police. The Greater London Authority and Manchester City Council tie for third place.
- Women make up just 10 % of directors of FTSE 100 companies and barely 20 % of Parliament, according to Sex and Power: Who Runs Britain? 2007, the Equal Opportunities Commission's annual survey looking at women in senior positions across the public and private sector.
- The removal of six praying Muslim religions leaders, imams, from a Phoenix-bound US Airways flight at Minneapolis-St. Paul has triggered yet another national debate in the USA about profiling of Muslims and religious diversity.
- More than half of black people in France believe they have been victims of discrimination in everyday life, a new survey has revealed. The poll, carried out for a group of black associations, is the first of its kind in France, where it is illegal to compile data based on ethnic criteria.
- Following a recent survey, which paints a gloomy picture about the extent of prejudice against disabled people in Britain and especially those with mental health conditions, Sir Bert Massie, Chairman of the DRC, has warned that widespread hidden prejudice against disabled people could result in further social segregation and exclusion.
- A motion in the Northern Ireland assembly condemning the Government's introduction of new legislation to ban discrimination on grounds of sexual orientation in the provision of goods, facilities and services from 1 January 2007 has been dismissed after a tied vote.
- Case Law Update: Av B - A male solicitor who had been having a sexual relationship with his much younger female personal assistant did not commit an act of sex discrimination when he dismissed her after discovering she was having an affair with a University student. The reason for dismissal was jealousy and that was inconsistent with the reason being on grounds of her sex.

New statutory pay rates announced

The Social Security Benefits Up-rating Order 2007 has been published, setting out the new rates of statutory maternity, paternity and adoption pay.

The annual uprating exercise also covers other state payments such as statutory sick pay jobseeker's allowance, incapacity benefit and state pension.

The increases are as follows:

- The standard rate of statutory maternity pay, paternity pay and adoption pay will increase from £108.85 to £112.75 per week from 1 April 2007.
- The standard rate of statutory sick pay will increase from £70.05 to £72.25 per week from 6 April 2007.

CIPD publishes flexible working tool

The CIPD have published a flexible working toolkit to assist its members in critically examining the way flexible working operates in their organisations, improve the clarity of everyone's role in operating flexible working arrangements and ensure that flexible working benefits the business, employees and customers alike.

The toolkit consists of:

- A framework against which organisations can consider the roles of individuals, teams, managers and HR in flexible working.
- Practical examples from organisations featured in CIPD research.
- A structure to help plan further actions.

The toolkit helps organisations assess:

- How well is flexible working operating?
- How flexible ways of working can be found that benefit individuals and the business?
- How HR can best support flexible working and sell the benefits?

As well as benefiting HR specialists, the CIPD believe the toolkit will help managers seeking to use flexible working to maximise the advantage to the organisation

Members can access the toolkit at:
<http://www.cipd.co.uk/subjects/wrkgttime/flexwking/fixwrklrs.htm>

IBM most gay-friendly employer in Britain

Stonewall has published its annual Workplace Equality Index, showcasing the UK's top 100 employers for gay people. Top 2007 employer is IBM. In second place is last year's winner, Staffordshire Police. The Greater London Authority and Manchester City Council tie for third place.

Lloyds TSB is named Most Improved Employer and Manchester City Council wins an award for Network Group of the Year.

Employers were ranked according to criteria ranging from implementation of an effective equality policy to demonstrating how they engage with their lesbian and gay staff, customers and service users. The Index assesses actual practice, such as recruitment and mentoring activity, as well as just policy.

According to Stonewall:

- 3.6 million lesbian and gay consumers can use the Index to decide where they want to spend their hard earned pounds.
- 1.7 million gay people in the UK workforce can use the Index to see how their organisation compares with rivals.
- 150,000 gay students in UK universities use the Index to decide which organisation they want to take their talents to upon graduation.

You can download a copy of the 2007 Workplace Equality Index booklet at:
<http://www.stonewall.org.uk/workplace/1477.asp>

Women woefully under-represented at the top

Women make up just 10 % of directors of FTSE 100 companies and barely 20 % of Parliament, according to Sex and Power: Who Runs Britain? 2007, the Equal Opportunities Commission's annual survey looking at women in senior positions in the public and private sector.

In its last Sex and Power survey before the 30-year-old EOC comes to an end in Autumn 2007, the EOC points out that the pace of change at the top in many areas remains painfully slow, and in some cases has even gone into reverse - despite the massive growth of women in work and public life. At the very top, ethnic minority women are especially under represented, accounting for just 0.4 % of FTSE 100 directors and 0.3 % of Parliamentarians.

Ethnic minority women account for 5.2 % of the population and 3.9 % of the labour market, and this percentage is growing and increasingly well qualified. Yet, an EOC survey of employers in local labour markets with above average black and Asian populations found that two-thirds of those who employ black or Asian women had none in senior roles.

This year's survey shows that women form only 10 per cent of the senior judiciary, 10 per cent of directors at FTSE 100 companies, 12 per cent of senior police officers, 14 percent of local authority council leaders, 17 per cent of editors of national newspaper, and 20 per cent of MPs (with only two ethnic minority women).

The EOC has calculated that at the current rate of progress, it will take another 20 years to achieve equality in the civil service top management, 40 years to achieve an equal number of senior women in the judiciary, 60 years to achieve an equal number of female directors at FTSE 100 companies (up from last year's projection of 40 years due to this year's decline in female FTSE directors), and up to 200 years – another 40 elections – to achieve an equal number of women in Parliament.

You can download the survey at:

http://www.eoc.org.uk/pdf/sexandpower_GB_2007.pdf

Discriminated against by 'Flying While Muslim'

The removal of six praying Muslim religious leaders, imams, from a Phoenix-bound US Airways flight at Minneapolis-St. Paul has triggered yet another national debate about profiling of Muslims and religious diversity.

The incident led the imams and their supporters to charge US Airways with being guilty of discriminating against them for "flying Muslim," while others have accused the imams of staging the whole event.

The six, who attended a national conference of Muslim imams, were removed after exhibiting "suspicious behaviour," which US Airways says included uttering anti-American statements, changing their seat assignments so that they would be scattered around the airplane, and asking for seat-belt extenders, which police say could be used as weapons.

US Airways had the imams removed from the plane, and according to the Council on American-Islamic Relations, a Muslim advocacy group, denied the clerics access to another flight and did not assist them in obtaining tickets on another carrier.

Nihad Awad, the council's executive director said the group was getting more reports of 'flying while Muslim' and racial profiling incidents across the country.

"We are concerned that crew members, passengers and security personnel may have succumbed to fear and prejudice based on stereotyping of Muslims and Islam," Awad said.

US Airways pledged a thorough probe. "We do not tolerate discrimination of any kind and will continue to exhaust our internal investigation until we know the facts of this case and can provide answer for the employees and customers involved in this incident," the airline said in a written statement.

First French racism poll released

More than half of black people in France believe they have been victims of discrimination in everyday life, a new survey has revealed. The poll, carried out for a group of black associations, is the first of its kind in France, where it is illegal to compile data based on ethnic criteria.

The survey commissioned by black advocacy group, the Representative Council of Black Associations (CRAN), and conducted by the TNS-Sofres polling firm, questioned 13,000 adults living in France, where it is estimated that nearly 4% of France's population is black, equivalent to 1.8 million people.

It found that 56% of black people believed they suffered racial discrimination at least from time to time, and 61% had experienced it during the past year.

More than a third felt that the problem was getting worse and nearly one in five believed they had been refused work because of the colour of their skin.

Council head Patrick Lozes said white society could no longer hide behind the absence of figures to deny the reality of racial discrimination. There are currently no black people serving in France's government and none of the deputies in the country's mainland government are black.

This results are not good news for France which saw weeks of rioting partly linked to anger about race discrimination felt by many youths from immigrant families and where, most recently, charity groups with far-right links had action taken against them for only serving pork soup to homeless people so as to deliberately exclude Muslims and Jews.

Widespread hidden prejudice against disabled

Sir Bert Massie, Chairman of the Disability Rights Commission (DRC), has warned that widespread hidden prejudice against disabled people could result in further social segregation and exclusion.

A chapter in the latest British Social Attitudes (BSA) report (1), from the National Centre for Social Research (NATCEN), paints a gloomy picture about the extent of prejudice against disabled people in Britain and especially those with mental health conditions. It is the first dedicated BSA module to report on public awareness of, and attitudes to, disability. The DRC funded this module and provided significant input into its design.

Among the survey's findings was evidence that over 70 per cent of people would not feel very comfortable were a person with schizophrenia to move in next door and over 50 per cent would not be very comfortable were a person with depression to become a neighbour.

Sir Bert said: "Despite 12 years of disability discrimination legislation the report reveals that disabled people are still struggling to rid themselves of the tag 'second class citizens'. When faced with disability, Britons are opting to keep their distance and this is the root cause of prejudice and discrimination."

The survey also reveals considerable confusion about what constitutes disability: more than half of respondents don't think of schizophrenia as a disability; and nearly a third think that someone who is temporarily on crutches with a broken leg for 6 weeks is disabled. The latter does not fall under the definition used in the Disability Discrimination Act.

However, as the report suggests, knowing disabled people has a consistent impact in reducing prejudice. People who have first or second hand experience of disability tend to hold less negative attitudes towards disabled people. For example, 82 per cent of people who don't know anyone who is disabled say that they would not feel very comfortable with someone with schizophrenia whereas 71 per cent of people who know someone who is disabled would not have a problem.

The DRC believe that reducing prejudice about disability in the long term will only be brought about by fostering greater contact between disabled and non-disabled people, which is valuable advice for employers to include as part of their diversity awareness programmes.

Assembly clashes over gay rights

A motion in the Northern Ireland assembly condemning the Government's introduction of new legislation to ban discrimination on grounds of sexual orientation in the provision of goods and services from 1 January 2007 has been dismissed after a tied vote.

After a two-hour debate at Stormont, 39 assembly members voted in favour of a DUP motion expressing disapproval of the legislation and 39 voted against. During the debate, the DUP said Christian-run businesses would be deemed to be breaking the law "if they refused access to their goods and services on ethical grounds".

Both the DUP and Ulster Unionist Party criticised the government for implementing the Equality Act (Sexual Orientation) Regulations in Northern Ireland on 1 January 2007 ahead of the rest of the UK and for holding only a two-month consultation.

The DUP's Jeffrey Donaldson claimed the regulations would make schools teaching traditional Christian views open to a harassment claim from gay pupils if they taught homosexuality was sinful. "All six of the world's major religions are opposed to homosexual practice. Judaism, Islam and Christianity all teach that homosexuality is sinful," he said.

Ulster Unionist Dermot Nesbitt said the law would "leave Christian bookshops and adoption agencies vulnerable to harassment claims, despite their deeply-held views".

Sinn Fein equality spokeswoman Caitriona Ruane accused the DUP of whipping up homophobic sentiment with the motion. "This motion is part of yesterday's agenda, part of the bad old days of the past," she said. "The days of hiding our identities are gone."

SDLP equality spokeswoman Patricia Lewsley, whose party's youth wing staged a protest against the motion outside Parliament Buildings, accused the DUP of "scaremongering". "All they will prevent is discrimination - not the teaching of anti-religious doctrine," she said.

With the legislation, introduced by the Equality Act 2006, due to come into force in the rest of the UK on 6 April 2007, and the current debate over the objection raised by Catholic adoption agencies, clearly there still may be difficulties ahead when deeply held, genuine beliefs run contrary to ethically based principles.

B v A 2007 UKEAT/0450/06

A male solicitor who had been having a sexual relationship with his much younger female personal assistant did not commit an act of sex discrimination when he dismissed her after he discovered she was also having an affair with a University student. The reason for dismissal was jealousy and that was inconsistent with the reason being on grounds of her sex.

B is a solicitor in a small practice. A started as a secretary but she was promoted by B to become his personal assistant. 10 months later, they had commenced a consensual relationship which developed to the extent that they were regarded in their local community as man and wife. B was considerably older than A. He supported her financially and, in particular, paid for her to undertake college and university studies in addition to working in his office.

12 months after the relationship started, A, unknown to B, started an affair with a young man called Mustafa at the university she was attending. She was, however, still working for B and continuing her relationship with him, although it was in decline.

Although A continued to express her affection for B, he saw A out walking with Mustafa and when the details of her affair with Mustafa became clear, B dismissed her.

The tribunal found that B had dismissed A when he saw her with another man and the reason was jealousy after the discovery that she was having another relationship. As such, the dismissal was unfair. The Tribunal also found that the B had discriminated against A on grounds of sex in dismissing her, as dismissal would not have occurred but for the fact that the A was a woman. The employer appealed.

In this particular case Sections 1(2) and 5(3) of the Sex Discrimination Act 1975 (SDA) applied, i.e.:

- a person discriminates against a woman if on the ground of sex, he treats her less favourably than he treats or would treat a man; and
- less favourable treatment has to be assessed by comparing how a woman was treated to a man in like- for-like circumstances.

The employer argued that the Tribunal was required to focus on the question of establishing the reason for the dismissal.

The tribunal had clearly found that the reason was jealousy. They had applied a "but for" her sex test rather than asking whether A's dismissal was "by reason of" her sex. It was nothing to do with A's gender. It was therefore not open to them to find that the dismissal was on account of the Claimant's sex.

Furthermore the employer argued that the Tribunal's failure to apply a hypothetical comparator test may have led them into the error that they made. Had they constructed a comparator, they would have had to assess how a homosexual male employer would have treated a male homosexual male employee in the same circumstances. If that had have been done, it would not have been possible to find that A was treated less favourably than a man would have been in her position.

Finally, the employer argued that the SDA was not designed to protect employees from bad behaviour or spurned relationships. It was to do with the protection of women from being treated less favourably because they are women and men being treated less favourably because they are men. That was not what had happened in this case.

The EAT was in complete agreement with the employer and upheld the appeal. The tribunal had erred in law. The necessary question was: "Why was the Claimant dismissed?" The tribunal had clearly found the dismissal was driven by jealousy. That was completely inconsistent with then going on to find that she had been dismissed on the grounds of her sex. She was not – the reason was jealousy.

The EAT also held that the Tribunal's error was compounded by the failure to carry out a comparator exercise. In the circumstances of this case the EAT considered that it was necessary to construct a hypothetical comparator. Following the cases of *Martin v Lanchester Ltd* UKEAT/0525/03/ILB, 22 March 2004, and *Chamberlin & Anr v Emokpae* [2005] IRLR 258, the appropriate comparator would have been a homosexual male employer and a homosexual male employee. On the Tribunal's findings, such an employee would have received exactly the same treatment, namely, he would have suffered dismissal when his apparent infidelity was discovered driven by feelings of jealousy.

So there you have it, if proof it ever it was needed that hell hath no fury like a lover scorned - we know it should be 'a woman scorned' but this is a diversity journal!