

Employment e-briefing



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Caste discrimination

In *Tirkey v Chandok and another*, the Employment Appeal Tribunal held that the existing definition of “race” within the Equality Act 2010 was wide enough to capture discrimination on the basis of caste.

Background

Race is defined under Section 9(1) of the Equality Act 2010 (the Act) to include the protected characteristic of colour, nationality and ethnic or national origin. Although caste is not expressly stated to be a protected characteristic, case law has indicated that “ethnic origin” should be interpreted broadly. Furthermore, Section 9(5) of the Act was amended by the Enterprise and Regulatory Reform Act 2013, which states that the Government must amend Section 9 of the Equality Act 2010 “so as to provide for caste to be an aspect of race”.

Facts

Ms Tirkey was born in India into a family described as “low caste” or “servant caste”. She was employed by Mr and Mrs Chandok in Britain as a domestic worker from 2008-2012.

Ms Tirkey alleged that the Chandoks had required her to work seven days a week from 6am to 12:30am, had failed to pay her the national minimum wage and had only allowed her to take one day of holiday during her period of employment with them. She was also deprived of her passport and her Bible, and was prevented from attending church.

She brought several claims against the Chandoks, which included unfair dismissal and unlawful deduction from wages. Ms Tirkey alleged that the main reason she was subjected to less favourable treatment was because of her low caste and that this was a form of either race or religious discrimination.

Employment Tribunal decision

The Employment Tribunal ruled that although caste is not yet explicitly mentioned in the Act, the definition of race is sufficiently wide enough to encompass many of the characteristics of caste.

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The Chandoks appealed against the decision on the grounds that caste does not currently fall within the definition of “race” within Section 9 of the Equality Act 2010 and therefore the Employment Tribunal could not rely upon future legislation which is not yet in effect. Moreover, they argued that since the Government had not yet amended the Act to include caste discrimination, they must have intended that caste should be included as an express protected characteristic.

Employment Appeal Tribunal decision

The Employment Appeal Tribunal dismissed the appeal on the basis that under the current law, race discrimination includes discrimination based on ethnic or national origins and caste discrimination would fall into this category. The fact that the Government intended to legislate further in respect of caste discrimination, but had not yet done so, was not determinative of the issue.

What does this mean for employers?

This ruling illustrates that caste is a protected characteristic for the purposes of discrimination, even where the legislation has not yet been amended to specifically include it.

While the Government is prepared for the possibility of making caste a protected characteristic, it has made it clear that it will not do so without full public consultation.

In the meantime, employers should exercise care both in the recruitment process and during the course of employment to avoid possible situations of caste discrimination. In particular, they should ensure that they do not make judgments about a potential candidate or an existing employee based on their cultural or social heritage, especially where there might be an association with race or ethnicity.

This case is also relevant in light of the Modern Slavery Act 2015, which came into force in October and requires businesses operating within the UK with a global turnover in excess of £36 million to release statements in each financial year of the steps they have taken to eliminate slavery and human trafficking from their supply chains.

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