

Employment

February 2010

Hello and welcome to the D&W Vox, our podcast keeping you up to date with what's new in employment law.

In this D&W Vox, prepared by our employment team, we take a look at:

- **Female Sailor wins sex discrimination claim**
- **Flexible working looks set to expand**
- **BA workers suspended after Facebook comments**
- **And finally why one employee's dismissal left him cheesed off**

[Female sailor wins sex discrimination claim](#)

A female sailor who was denied a promotion, has succeeded in arguing that the failure to promote her was based on her sex. It can be very difficult to succeed in promotion based discrimination claims where a Tribunal essentially has to review why a person has not been given the job. In this case, the Tribunal were persuaded by the fact the role in which she was passed over for by her all male competitors, was a role she had been performing in an acting capacity since 2006, not to mention her glittering CV, in which she recounted that she had been selected as the Nato Military Member of the year in 2000 and awarded an MBE in 2001.

What was also interesting about this case was the fact the Tribunal have seemingly made recommendations for reform of the Navy's promotion system which they described as a "matter of concern" and the procedure employed by the promotion board was "primitive". While formal recommendations have been seldom used in the past, once the Equality Bill comes into force, Tribunals will have wider powers to issue them.

[Flexible working looks set to expand](#)

The Department of Work and Pensions is looking at possible ways of extending current legislation regarding flexible working so that all employees would have the right to request flexible working from the start of their employment. The Equality and Human Rights Commission has also called for the law to be extended as soon as possible.

Broadly speaking the current rules allow parents of children under 16 and carers to request the right to flexible working, after 26 weeks of service. An introduction of this extension has been met with criticism from business groups with both the EEF and CBI acknowledging that it would cause problems for businesses. Although with an election looming, and no date suggested for future implementation, this may be one of those policy proposals that never gets off the ground. But with the tide of political pressure from all parties supporting an extension in flexible working, it may just be a matter of time before the right will apply to all employees regardless of childcare or caring needs.

[Actions on Facebook have caused BA workers to be suspended](#)

15 flight attendants have been suspended by British Airways after writing allegedly derogatory comments on the social networking site Facebook. Some victims have come forward saying they have been threatened with verbal threats, written abuse and spoof e-mails. Press reports also include comments from the suspended employees, claiming that they never participated in the Facebook discussions, nor did they threaten anyone and believe they have been accused because they were a Facebook friend of the person who made the original posting.

The issue highlights the increasing prevalence of social networking sites, and the fact that employers do need to be alive to the fact that cyber-bullying could be taking place within their organisation. Something to think about the next time you review your harassment policy.

And finally, why one employee's dismissal left him cheesed off

McDonalds hit the headlines this month after they dismissed an employee who gave his co-worker a cheeseburger but only charged for a hamburger. McDonald's explained that its policies prevent any free gifts to family, friends or colleagues and argued that the slice of cheese was breaking these rules. The employee was dismissed for gross misconduct and the Dutch court held that it was unfair. It said that a written warning would have been a more appropriate punishment and ordered McDonalds to pay over €4,000 compensation and legal costs. As the court stated: "the dismissal was too severe a measure...it is just a slice of cheese".

And that's all for this month's Vox.

This Podcast Transcript is correct to the best of our knowledge and belief at the time of going to press. It is however written as a general guide, so it is recommended that specific professional advice is sought before any action is taken. We are required by law to protect personal data.

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