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Judgment of the Court of Justice in Case C-303/06

Coleman v Attridge Law and Steve Law

**COMMUNITY LAW PROTECTS AN EMPLOYEE WHO HAS SUFFERED
DISCRIMINATION ON GROUNDS OF HIS CHILD'S DISABILITY**

The prohibition of discrimination laid down by the directive on equal treatment in employment and occupation¹ is not limited to disabled people alone

Ms Coleman worked in a firm of solicitors in London as a legal secretary from January 2001. In 2002, she gave birth to a disabled child whose health condition requires specialised and particular care which is provided primarily by her.

On 4 March 2005, Ms Coleman accepted voluntary redundancy, which brought the contract of employment between her and her former employer to an end. On 30 August 2005, she lodged a claim with the Employment Tribunal, London South, alleging that she had been subject to unfair constructive dismissal and had been treated less favourably than other employees because she was the primary carer of a disabled child. She claims that that treatment caused her to stop working for her former employer. In support of her claim, she put forward various facts amounting, in her view, to discrimination or harassment since, in similar circumstances, the parents of non-disabled children were treated differently. She cites, in particular, her employer's refusal to allow her to return to her previous job on her return from maternity leave, the refusal to allow flexibility as regards working hours and abusive and insulting comments made about both her and her child.

In those circumstances, the Employment Tribunal referred the matter to the Court of Justice, asking whether the directive on equal treatment in employment and occupation must be interpreted as prohibiting direct discrimination on grounds of disability and harassment related to disability only in respect of an employee who is himself disabled, or whether the directive applies equally to an employee who is treated less favourably by reason of the disability of his child, for whom he is the primary provider of the care required by virtue of the child's condition.

The Court observes that the directive defines the principle of equal treatment as meaning that there is to be no direct or indirect discrimination whatsoever on the grounds, inter alia, of

¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

disability, and that it applies to all persons in relation to employment and working conditions, including dismissals and pay.

The Court notes that, whilst the directive includes certain provisions designed to accommodate specifically the needs of disabled people, that does not lead to the conclusion that the principle of equal treatment enshrined in that directive must be interpreted strictly, that is, as prohibiting only direct discrimination on grounds of disability and relating exclusively to disabled people. According to the Court, the directive, the purpose of which is to combat all forms of discrimination, applies not to a particular category of person but by reference to the nature of the discrimination. An interpretation limiting its application only to people who are themselves disabled is liable to deprive the directive of an important element of its effectiveness and to reduce the protection which it is intended to guarantee.

As regards the burden of proof, the Court observes that, in the event that Ms Coleman establishes facts from which it may be presumed that there has been direct discrimination, the effective application of the principle of equal treatment then requires that the burden of proof should fall on her employer, who must prove that there has been no breach of that principle.

The Court concludes that the directive must be interpreted as meaning that **the prohibition of direct discrimination laid down therein is not limited only to people who are disabled. Consequently, where an employer treats an employee who is not himself disabled less favourably than another employee in a comparable situation, and it is established that the less favourable treatment of that employee is based on the disability of his child, whose care is provided primarily by that employee, such treatment is contrary to the prohibition of direct discrimination laid down by the directive.**

With regard to harassment, the Court adopts identical reasoning and concludes that **the relevant provisions of the directive are not limited only to people who are themselves disabled. Where it is established that unwanted conduct amounting to harassment is suffered by an employee in the same situation as that of Ms Coleman, such conduct is contrary to the prohibition of harassment laid down by the directive.**

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Languages available: CS DE EL EN ES FR HU IT PL PT SK SL

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-303/06>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
a service provided by the European Commission, Directorate-General Press and
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