COURTWATCH: ECJ reject narrow interpretation of discrimination

On 17 July 2008, the European Court of Justice passed judgment in the case of Coleman v. Attridge Law and Steve Law (Case C-303/06). The judgment interprets the meaning of the prohibition of direct discrimination and harassment in employment and occupation on grounds of disability pursuant to Article 2(2)(a) and Article 2(3) of Council Directive 2000/78/EC of 27 November 2000.

Ms Coleman worked at a law firm in London as a legal secretary from January 2001. In 2002, she gave birth to a disabled child for whom she is the primary carer.

On 4 March 2005, Ms Coleman accepted voluntary redundancy that ended her employment at the law firm. On 30 August 2005, she brought a claim to the South London Employment Tribunal for constructive dismissal and disability discrimination against her former employer. It was alleged that she had been treated less favourably than other employees because she was the primary carer for her child. For example, she alleged that her former employer refused to allow her back to her existing job following maternity leave. Further, she was not granted similarly flexible working arrangements as those of her colleagues with non-disabled children.

The case hinged on the matter of the scope of the prohibition of direct discrimination and harassment on grounds of disability contained in the framework directive on employment and occupation (2000/78/EC). In particular, is the protection granted by the prohibition contingent on the employee having a disability herself, or does it also include the situation where the employee is discriminated against on the basis of the disability of her child, for whom she is the primary carer? The Employment Tribunal referred the matter to the Court of Justice.

The Court stated that the purpose of the directive is to prohibit all forms of discrimination in employment and occupation on grounds of, inter alia, disability. The principle of equal treatment is applicable by reference to the grounds set out in Article 1 of the directive, including disability, and not to a particular category of person. As the Court explained, “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.”
In relation to the burden of proof, once Ms Coleman establishes a *prima facie* case of discrimination, the effective application of the principle of equal treatment requires that the burden of proof shifts to her former employer.

The Court concluded that Directive 2000/78 “...must be interpreted as meaning that the prohibition of direct discrimination laid down by those provisions is not limited only to people who are themselves disabled. Where an employer treats an employee who is not himself disabled less favourably than another employee is, has been or would be treated 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 Article 2(2)(a).”

In relation to harassment, the Court used the same reasoning to conclude that the “...meaning that the prohibition of harassment laid down by those provisions is not limited only to people who are themselves disabled. Where it is established that the unwanted conduct amounting to harassment which is suffered by an employee who is not himself disabled is related to the disability of his child, whose care is provided primarily by that employee, such conduct is contrary to the prohibition of harassment laid down by Article 2(3).”

The judgment in this case is very important, as it asserts the general principle that discrimination should be prohibited when it is on the ground of the association of a person with other persons to whom a prohibited ground applies.

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