



## **NOW I'M A BELIEVER! BELIEF IN CLIMATE CHANGE PROTECTED UNDER RELIGIOUS DISCRIMINATION LAW**

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A recent case at the Employment Appeal Tribunal has held that a belief that 'carbon omissions must be cut to avoid catastrophic climate change' is capable of amounting to a philosophical belief for the purposes of the Employment Equality (Religion or Belief) Regulations 2003 (the 'Regulations'). The Regulations afford protection to employees from direct and indirect discrimination on grounds of their religion or or similar philosophical belief and as such this case is likely to extend the scope of the Regulations and protect a larger number of employees from discrimination on grounds of their religion or belief.

In the case of *Grainger plc and Orrs v Nicholson* the employee, Mr Nicholson, claimed that he was dismissed from his position as Head of Sustainability because of his belief in climate change and the protected disclosures he had made. It was the employee's case that his beliefs were not merely 'opinion' since his belief in the imminence of the dangers of climate change affected most parts of his life including his choice of home, his means of travel, what he did with waste, what he bought and his consumption of food. The EAT held that the employee's beliefs *did* amount to philosophical belief within the Regulations and set out the following criteria whereby it could be determined whether or not an employee had a genuine philosophical belief:

- The belief must be genuinely held.
- It must be a belief and not an opinion or viewpoint based on information currently available.
- It must be a belief as to a weighty and substantial aspect of human life and behaviour.
- It must attain a certain level of cogency, seriousness, cohesion and importance.
- It must be worthy of respect in a democratic society, not be incompatible with human dignity and not conflict with the fundamental rights of others.

It has been established in previous cases that even if the belief is not shared by others it can potentially still be held as a philosophical belief and come within the protection of the Regulations.

The EAT did however stress in *Grainger* that in the event that an employee is purporting to establish such a philosophical belief that employee would probably need to be cross-examined on this belief in order to establish the validity of it. This raises a question of just when an employee would be subject to cross examination and it may be that Tribunals may more readily accept certain philosophical beliefs than others.

With the frequent coverage of the imminence of catastrophic environmental consequences as a result of climate change it is likely that the case of *Grainger* will have significant consequences for employers in the future in the event that employees assert this as a 'philosophical belief'. Since employees can potentially now assert

beliefs such as climate change, passivism or vegetarianism this will dramatically increase the protection under the Regulations and would therefore be an avenue by which non religious people, who may have certain philosophical beliefs that would not be classed similar to 'religious beliefs', may be protected under the Regulations.

The case of *Grainger* will also pave the way for a much wider interpretation of 'philosophical belief' once the Equality Bill comes into force. The Equality Bill is a landmark legislative proposal designed to harmonise complex discrimination laws. The Equality Bill will remove the requirement for a philosophical belief to be 'similar' to a religious belief and as such this may result in employees arguing that their political beliefs are protected under the Regulations. The effect of this could be, for example, that a member of the BNP who is allegedly dismissed due to his membership, as in the case of *Redfearn v Serco Ltd t/a West Yorkshire Transport Service*, could then argue that he has been discriminated against in breach of the Regulations.

The Equality Bill is due to receive Royal Assent in Spring 2010 and once it comes into force as the Equality Act it will involve a complete upheaval of discrimination laws in the UK. It seems likely that the trend will continue towards a broad interpretation of religious and philosophical belief and as such employers should have a comprehensive equal opportunities policy in place in order to protect them in the future.

If you would like to discuss any issues raised in this Update or any other employment related matter please do not hesitate to contact our Employment Team on:- 01279 755777 or email [employment@nockolds.co.uk](mailto:employment@nockolds.co.uk)

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