

Single comment was sex discrimination

In the know



A recent case has shown us that it is not necessary for a discrimination claim to be based on an ongoing series of complaints of less favourable treatment towards an employee; a single comment can be enough. Here, we take a look at the case and what employers can do to guard against similar claims.

The facts

- In *BAE Systems v Konczak*, an employee had become upset at her manager's suggestion that she move to a particular working location;
- Konczak had requested a relocation herself because she felt she was not given a proper job to do, however, was not happy at the particular location suggested because it would mean working with employees who she had previously alleged had subjected her to sexual harassment;
- During a meeting with her manager, she had become upset when she felt her objections were not being taken seriously and began to cry. Her manager said words to the effect that "women take things more emotionally than men, while men tend to forget things and move on" seemingly in an attempt to console her;
- Konczak went on sick leave the next day, being certified by her GP as unfit to work because of stress. She subsequently suffered a breakdown;
- She made a claim of sex discrimination at Employment Tribunal, based on her manager's comment.

Employment Tribunal decision

- The Employment Tribunal found that the manager's single comment constituted sex discrimination and, because of the impact it had on her wellbeing, awarded Konczak in excess of £300,000;
- BAE Systems lodged an appeal against the level of compensation awarded, labelling it excessive;
- The case progressed to the Court of Appeal who decided the

award was appropriate in the circumstances due to the fact that Konczak had not been able to work again.

What this means for employers

- It is established principle that harassment is seen through the eyes of the "victim" and not the perpetrator, so it does not matter whether a comment was not intended to cause offence;
- This case highlights a different risk for employers – one involving situations where there appears to be no malicious intent and no 'innocent banter' which is often at the heart of harassment claims;
- Employers must not allow themselves to be caught off guard;
- Employers should not make assumptions based on any of the protected characteristics. The manager in this case fell foul of voicing an opinion based on his perception of female behaviour. Intended to console the employee or not, it was found to have discriminated against the employee on the grounds of sex.

Croner Tips

- **Employers should ensure their managers and anyone else with the responsibility to make decisions involving employees are made aware of the organisation's equal opportunities policy;**
- **Structured training in the implementation of the policy, including example situations where managers may be most exposed to the risk of discriminatory behaviour, should be provided and reviewed periodically.**

The content of this briefing is correct at the time of publishing.

Please contact the 24 Hour Advice Service for advice on your specific situation before acting on the information in this article