

The Truth About Islamic Headscarf Bans

In the know

The European Court of Justice has handed down a ruling that an employer's ban on employees wearing Islamic headscarves in the workplace was not direct religious discrimination. However, this ruling is more complicated than it may initially seem. Here, we give the full picture.

Belgian Employer Banned Headscarves

- The claimant, Ms Achbita, worked as a receptionist for G4S Secure Solutions in Belgium;
- The claimant is Muslim. She informed G4S that she was going to start wearing a headscarf (hijab) to work, but was told that this would breach the employer's unwritten rules on neutrality when in the company of customers;
- G4S then amended its dress code to expressly prohibit the wearing of any religious, political and philosophical symbols;
- The claimant refused to attend work without the headscarf and she was dismissed. She claimed religious discrimination.

ECJ Held: No Direct Discrimination

- The European Court of Justice (ECJ) found that the ban on headscarves was not direct discrimination;
- This is because the rule was applied to everyone in the organisation without differentiation.

But Potential For Indirect Discrimination

- The ECJ gave guidance to say that such a ban could be indirect discrimination;
- This is where a rule that applies to everyone equally disadvantages a group of people who share a protected characteristic;
- An employer can defend a claim of indirect discrimination by objectively justifying his actions;
- This would involve showing their actions were a "proportionate means of achieving a legitimate aim".

How an Employer May Implement a Ban

- Apply the ban to every religion. This means prohibiting Christian employees from wearing crosses, for example on necklaces; Sikh men from wearing turbans; Jewish men from wearing skullcaps, etc. Failure to do this risks a claim of direct discrimination;
- Have a legitimate aim. In this case, the employer's wish to project a neutral image to its customers was considered legitimate;
- Show that the method of achieving that aim was both appropriate and necessary (this relates to the need for measures to be 'proportionate');
- For instance, would the dismissal of someone who insisted on wearing religious symbols be the least drastic action that could be taken to achieve the aim of neutrality when around customers?
- In order to back up a stance of neutrality, employers should consider whether they should remove all possible links to religion where customers are present. This may include things like having a Christmas tree or decorations up;
- Complete neutrality is likely to have to cover political and philosophical symbols too, which may even spread to some football allegiances.

Croner Tips

To remain risk free, employers need to have a good knowledge of religion and manifestations of religious belief through clothing to ensure consistent treatment.

Please contact the Business Support Helpline for advice on your specific situation before acting on the information in this article.