

Those who care for the disabled may benefit from laws against disability discrimination

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Disability discrimination by association

As the law stands in the UK, every claimant must be able to prove that they are, or were, disabled persons (as defined) if they are to enjoy the employment protection afforded by the Disability Discrimination Act 1995 (DDA). This, however, looks set to change following the recent opinion of the Attorney-General in the case of *Coleman v Attridge Law*, which, if followed by the European Court of Justice (ECJ), will have profound implications for UK employers and employees alike.



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Mrs Coleman was a legal secretary, and had a young son with serious disabilities. When she sought to take time off to care for him, she was allegedly accused by her employer of, among other things, attempting to manipulate her working conditions. She resigned and claimed constructive dismissal and disability discrimination, arguing that her employer had treated her less favourably than employees with non-disabled children.

The issue which immediately arose at tribunal was whether it was competent for a non-disabled person to bring a discrimination claim based solely upon her association with a disabled person. The matter was far from clear. The governing European directive with which the UK is required to comply, provides only that a person should not be treated less favourably "on the grounds of disability". The DDA prohibits less favourable treatment of a disabled person only. The tribunal therefore referred the case to the ECJ for a ruling on whether the directive does indeed extend to discrimination on grounds of association with a disabled person.

Although the ECJ has not yet decided the case, the Attorney-General has delivered an opinion in which he concluded that the directive does (and therefore the DDA should) cover employees who are treated less favourably purely on the grounds of their association with a disabled person.

It is widely expected that the ECJ will follow the Attorney-General's opinion, in which case the estimated 2.5 million carers of disabled persons in the UK will, at a single stroke, enjoy far greater statutory protection than ever before. Perhaps more important, however, it will leave the door wide open for similar changes to the law regarding other forms of discrimination, such as sex and age. Employers should therefore watch this space and be aware that they may well soon require to review their internal policies and procedures to prevent the risk of discrimination by association, or face the consequences.

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