

NEWS

employment law

SEX DISCRIMINATION & HARASSMENT

A woman who brought a claim for sexual harassment, after she discovered that nine of her colleagues had circulated obscene e-mails about her, received a £10,000 settlement from her former employer.

The woman, who worked as a Sales Support Administrator and Personal Assistant, only came across the offending e-mails when she was given access to a colleague's inbox when he was absent from the office on extended leave. She made a formal complaint but felt that this was not taken seriously. Eventually, she felt she had no choice but to resign. The woman was supported in her action by the Equal Opportunities Commission.

There have been several cases involving the misuse of e-mail at work. Employers should remind employees that what they put in an e-mail message should not be regarded any less seriously than other written or spoken communications. Firm's policies should be clear on this issue.

In another case, the Employment Appeal Tribunal (EAT) ruled that the downloading of pornography onto office computers by male members of staff, while a female colleague was working in the same room, was an act of sex discrimination – even though the woman made no complaint at the time because she valued her job and decided it would be best to 'keep her head down'.

The Court ruled that the men's actions clearly had the potential to cause an affront to a female employee working nearby and that this would be regarded as degrading or offensive to her as a woman. There was evidence that the woman had found the behaviour unacceptable and in the EAT's view it followed that it was clearly potentially less

favourable treatment. The act was so obviously detrimental, intimidating and undermining her dignity at work that the fact that she didn't complain was not an adequate defence. The burden of proof was therefore on the employer to show that there had not been less favourable treatment – for instance, to show that the woman had been a willing participant in what was taking place.

In October 2005, the Employment Equality (Sex Discrimination) Regulations made changes to the Sex Discrimination Act 1975 (SDA) and the Equal Pay Act 1970 in order to implement the amended EC Equal Treatment Directive.

The changes introduced a new definition of indirect sex discrimination in employment matters and vocational training and the SDA now contains a specific prohibition against harassment and sexual harassment. Also, if a person claims that they have suffered discrimination or harassment, under the revised legislation an employer has to respond to their questionnaire (form SD74) within eight weeks. Failure to do so could count against the employer at an employment tribunal. In addition, the SDA was amended to clarify the laws regarding less favourable treatment on grounds of pregnancy or maternity leave and on adoption and paternity leave rights.

Many businesses take out insurance cover against awards from tribunals and the legal costs of fighting Tribunal proceedings. We can now offer insurance as part of our service which enables you to nominate Bray & Bray as your appointed solicitor.

We can offer EXPERT ADVICE on this topic or other employment law matters. Please contact us.

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