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awaited changes to Sex Discrimination Act 1975 – now in force

This is the first of an occasional series of e-bulletins which will highlight important non gaming law legal issues that are relevant to the gambling and leisure sector. We hope you will find these e-bulletins useful. Please feel free to pass this on to your colleagues and do not hesitate to contact one of our expert lawyers if you require any further advice or clarification on these issues.

The expected changes to the Sex Discrimination Act 1975 came into force recently. They will have a significant impact on maternity rights, harassment claims and the liability of employers for the acts of third parties.

Last year the High Court found that changes to the 1975 Act introduced in 2005 did not correctly implement European Law. As a result, the Sex Discrimination Act 1975 (Amendment) Regulations 2008 came into force on 6 April 2008.

The 1975 Act now:

- has a broader definition of who is protected from the first type of harassment under the Act (ie.unwanted conduct but not of a sexual nature)
- renders employers liable for harassment of employees by third parties if they have not taken reasonable steps to prevent it and
- entitles employees on Additional Maternity Leave to the same contractual benefits as for Ordinary Maternity Leave

harassment

Harassment no longer has to be conduct "on the ground of her sex" but is now "unwanted conduct that is related to her sex or that of another person". This means that a claimant need not be the person subjected to the unwanted conduct, but could be a witness (male or female) to harassment, or any person working in an environment of offensive gender-related banter (not necessarily sexual), if their dignity is violated or where an offensive, degrading or humiliating environment is created.

One example given by the Government is where a male employee follows a female into the female toilets to shout at her. A previous case on this subject had determined that such treatment was not "on the ground of her sex" and therefore not discrimination. However, the Government believes this scenario could be covered by the new definition and that it is conduct "related to her sex"; hence the new regulations.

The other major change in relation to harassment is that now harassment of an employee by a third party, such as a customer or supplier, could lead to a successful claim against the employer. The employer has to know that harassment by a third party has occurred on at least two occasions before failure to prevent it can result in a claim, but it does not have to be by the same person – so it could in theory be harassment, for example, by three different customers. There is no requirement for the harassment to be of a similar nature or in similar circumstances.

Businesses will need therefore to monitor the activities of their customers - be it on the telephone or in person - or at least put in place policies and procedures which enable employees to bring such problems to the attention of the management and/or HR department at an early stage so that appropriate action can be taken before the business itself becomes liable for the activities of any customer.

Your business's harassment policies may now need to be reviewed in the light of these changes and if you would like to discuss the changes to the law and to talk about how your company can ensure it complies with this new law, please contact Stephanie Slanickova, senior solicitor in the Employment Law team, on 020 7814 5422 or stephanie.slanickova@bllaw.co.ukSenior

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For any other gaming related issues, please contact Peter Wilson, head of Gaming and Betting team.

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Clients praise the group's "excellent, responsive" service.

Chambers UK, A Client's Guide to the UK Legal Profession 2007

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