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BARRISTERS

EMPLOYMENT

FACT 11

INDIRECT DISCRIMINATION

This usually occurs when an employer does something that impacts on a certain group of employees with a particular characteristic e.g. insisting on rostering employees on their religious Sabbath (religion) or setting a height or strength requirement (sex/disability). This is usually described as the 'group disadvantage'.

Section 19 of the Equality Act 2010 provides that a person discriminates against another if:

⇒he applies to that person a provision, criterion or practice which he applies to other people with whom that person does not share the protected characteristic (e.g. a strength requirement);

⇒it puts persons who do share the characteristic at a particular disadvantage when compared with persons who do not share it (e.g. women);

⇒and he cannot show it to be a proportionate means of achieving a legitimate aim (e.g. moving bags of cement requires someone strong).

The burden of proof is on the employer to establish justification. The principle of proportionality requires a balance to be struck between the discriminatory effect of the measure on the employee and the needs of the employer. The tribunal must make its own assessment of whether the former outweighs the latter. The more serious the impact, the stronger the justification must be.

Whilst the principles are relatively straightforward their application can be tricky so seek specialist advice if you are thinking of bringing a claim.