

Dress Codes in the workplace discriminatory?



In December 2015, there was much media coverage of the situation that Nicola Thorp found herself in when arriving to work as a receptionist wearing flat shoes and being sent home without pay for failure to comply with the dress code, which required the wearing of shoes with a heel of between 2 and 4 inches.

An online petition was started by Miss Thorp calling for the law to be changed. The House of Commons Petitions Committee and the Women and Equalities Committee carried out a joint enquiry, focusing on those areas of work where this was considered to particularly be an issue; hospitality, retail, hotels and tourism, travel and airlines.

The Committee considered medical evidence about the health effects of wearing high heels for longer periods of time especially for those who were over 40 and/or disabled.

The Committee indicated that there seemed to be an apparent failure of employers to undertake health & safety assessments on such dress codes.

There was also evidence that some women find particular dress codes, such as wearing make up and skirts above the knee degrading, feeling sexualised in the workplace in a way that is not the case with male dress codes.

The Government's written evidence to the Committees considered that the dress codes which Miss Thorp had been subject were already unlawful under the Equalities Act 2010. The Committee were not so sure.

Although the Equalities Act may be clear in principle its application to individual cases was far from straightforward. There was considerable uncertainty about whether provisions requiring employees to wear make up are permissible. The key recommendations arising from the Committees' deliberations were:

- 1) The Government should develop an awareness campaign to help workers understand how to make formal complaints and to bring claims if they believe they are being subject to discriminatory treatment at work.
- 2) Detailed guidance for employers should be published to help employers understand how discrimination law and health & safety law apply to workplace dress codes. This guidance was promised by July 2017 and should cover the more controversial issues such as high heels, makeup, hair and skirt length.

The Committees concluded that there wasn't a sufficient deterrent to employers for breaching the law such as there was with regard to National Minimum Wage. The introduction of tribunal fees, which might be more than the successful claim award is a strong disincentive for workers.

The Committees have recommended that the Government must substantially increase the penalties for employers who are found to have breached the law. They also suggested introducing injunctions, prohibiting enforcement of a dress code on an interim basis.

Whilst there have been several cases on the issue of dress codes with regard to religion or belief discrimination, there is not much in recent case law on whether dress codes constitute sex discrimination.

It remains to be seen whether the Government has any appetite to grapple with these issues given their post election position and that, their view is the law already provides protection.

FEAR: Face Everything And Rise



“Face everything and rise” was the inspiring advice from the Taste of Kent Awards 2017 Young Food And Farming Entrepreneur, Danielle Usherwood, speaking at a Gullands’ co-hosted event at the Medway Innovation Centre earlier this summer.

Gullands teamed up with accountants McCabe Ford Williams and Metrobank and brought together a range of entrepreneurs and start-up business owners, which included representatives from land based industries, fashion and digital entertainment. They were joined at the round table event by senior business advisors from Kent Invicta Chamber, Kent & Medway Growth Hub, University of Greenwich and Kent Foundation.

Another award-winning food entrepreneur, Craig Hewitt, also spoke and shared his experience of starting up and running a business.

Danielle Usherwood told the story of her award winning Baps & Bloomers family bakery in Sandwich. She advised the audience that: “FEAR, for a new business owner could mean forget everything and run, but she preferred to choose to face everything and rise”. Appropriate advice from the owner of a successful bakery business. Another major component in her success, apart from complete dedication, is delivering consistent quality.

Craig Hewitt, the former commercial director of the London Metal Exchange, described how he chose to swap a high-level business career to establish Eggs to Apples Trading, an award-winning food hall near Battle in East Sussex. He advised setting new but achievable goals every day to keep momentum. For example, they move staple items within the shop weekly to ensure customers need to have a good look around and will then notice and purchase other items.

Associate Sarah Astley at Gullands teamed up with Leigh Jones and Tom Kirkham of McCabe Ford Williams and Duncan Simmons from Metrobank to give an all-encompassing talk on the legal, accounting and financial essentials to setting up in business. Sarah advised on the importance of getting the basics right, first time, such as the business structure, agreements with shareholders or partners and trading agreements.

Sarah Astley commented: *“Many new business owners get wrapped up in the day to day activity of running their business, but it really does pay to be as professional as possible from the beginning and ensure you are taking the best advice. This can also help to escape some of the typical issues new business owners face at the outset and to avoid costly disputes at a later stage.”*

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Oyster Bill receives Royal Assent



Dudley Cramp, Consultant Solicitor at Gullands has been responsible for drafting the Faversham Oyster Fishery Company Bill, which received Royal Assent earlier this year. The Bill provides for the alteration of the objects, powers and constitution of the Faversham Oyster Fishery Company, which is a statutory company incorporated by the Faversham Oyster Fishery Act 1930.

The new legislation will enable the company to make a number of significant changes to the way it operates. It will also help to modernise the way in which the company is governed, bringing its governance into line with current practice. It will also enable the diversification of business operation and allow it to raise more capital in the future.

Dudley Cramp comments: *"This has been a fascinating couple of years' work to bring all of the aspects of the structure and operation of this very unique company into the Bill together as it has passed through the various stages of the Parliamentary process. These new powers will help ensure one of the UK's oldest industries and company is in a very good position for operating over the next several hundred years."*

News in brief

Jobs subject to high suicide risk

Following the recent high profile reporting on the issues of mental health, the Office of National Statistics commissioned by Public Health England (PHE), have revealed according to data between 2011 and 2015 suicides are less common among women than men. Women at high risk include those working in culture, media and sport (69% above the national average), primary school teachers (42% above average) and nurses (23% above average). Men in the construction industry faced a risk three times above the national average, while in the care sector, the risk of suicide for men and women was almost twice the national average.

PHE, The Samaritans and Business in the Community have created a Suicide Prevention toolkit for employers in light of the findings.

Zero hours workers right to request fixed hours switch

The Taylor review will recommend that zero hours workers be given a right to request to switch to fixed hours, according to reports last month. It is reported that, if the right is implemented, employers would be required to respond "seriously" to the request and provide reasons for the final decision. However, some unions have argued that the proposals do not go far enough. A right to request just as with flexible working regulations, does not mean that an employer necessarily has to say yes to that request.

Silver quota

Major companies including Barclays, Co-op and Boots are set to introduce a "silver quota" to increase the number of over 50s that they employ by 12% in the next five years. It comes as part of a government-led initiative, under which employers also agree to publish the number and percentage of over-50s in their workforce. The aspiration is to secure an extra one million roles for older UK workers by 2022. The scheme follows research undertaken by charity Business in the Community that suggests the UK is facing a jobs gap of 7.5 million unfilled roles by 2022. A total of eight companies have agreed to take part in the scheme.

Worker can claim compensation if no holiday pay



The European Court of Justice has been advised that a self-employed window salesman from the UK is entitled to claim compensation in lieu of holiday pay he did not receive over a 13-year period, which may result in other businesses with commission paid workers facing similar claims if the Court rules the same later this year.

Mr King brought a claim against Sash Window Workshop Limited. Although he had an employment contract with the firm, it did not specify if he was entitled to paid leave and described him as self-employed. He had been paid entirely on commission.

Mr King was dismissed when he reached the age of 65, so he brought a compensation claim against the firm which amounted to £27,000. At a UK Employment tribunal, it was found he should have been treated as a full-time worker.

Prior to the European Court ruling, the advocate general Evgeni Tanchev has said: "A worker like Mr King may rely on EU law to secure payment in lieu of untaken leave, when no facility has been made available by the employer, for exercise of the right to paid annual leave... Upon termination of the employment relationship a worker is entitled to an allowance in lieu of paid annual leave that has not been taken up."

Amanda Finn, partner at Gullands comments: "This is a long running case and opinions given by the ECJ advocate generals are normally followed by the full court, although we will have to wait for the final decision. This will have an impact on other businesses and business owners should therefore review their own arrangements with workers and staff. This is another case which has gone to the ECJ to decide, which involves a business operating in the 'gig' economy, and which involves an employee being deprived of benefits to which they are entitled, because they were reclassified as self-employed by the business."

Quick reference section

Statutory minimum notice periods:

An employer must give at least:

- One week's notice to an employee who has been employed for one month or more, but less than two years.
- One week's notice for each **complete** year of service for those employed for more than two years.
- Once an employee has more than 12 year's service, the notice period does not extend beyond 12 weeks.

National Minimum Wage

(From April 2017)

Apprentices	£3.50
16-17	£4.05
18-20	£5.60
21-24	£7.05

National Living Wage from April 2017

for 25+ £7.50

Statutory Sick Pay (from April 2017)

per week £89.35

Statutory Shared Parental/Maternity/Paternity/Adoption Pay

(basic rate) (from April 2017)

£140.98

Statutory Holiday

5.6 weeks for a full time employee.

This can include bank and public holidays.

Redundancy Calculation

- 0.5 week's pay for each full year of service when age is less than 22.
- 1 week's pay for each full year of service where age during year is 22 or above, but less than 41.
- 1.5 week's pay for each full year of service where age during year is 41 and over.

Calculation is capped at 20 years.

Maximum week's pay is capped for dismissals after 6th April 2017 under the Statutory Scheme at £489.00

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If you would like any additional information on any of the subjects discussed in this newsletter please do not hesitate to contact us.



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