

# DRAPER LANG QUARTERLY



## 2022 Planning - Discrimination

WITH UNLIMITED DAMAGES, CAREER LOSS  
COMPENSATION AND HUGE REPUTATIONAL DAMAGE,  
THE STAKES ARE HIGH IN DISCRIMINATION CLAIMS...

"We are an Equal Opportunities employer". How often have you heard or seen that phrase? Anti-discrimination legislation has been in place since the 1970s, yet thousands of claims are filed each year. Why, given such public commitment to equal opportunities, are things still going wrong and how can employers protect themselves against vexatious claims?

Employers have a part to play in upholding discrimination laws and should be aware that they can be liable for the behaviour of employees, both inside and outside of work. To protect themselves and their employees, it is important that employers can show they have taken "*all reasonable steps*" to prevent discrimination.

### "REASONABLE STEPS" WILL USUALLY INCLUDE:

- Having the right policies and reviewing them regularly.
- Educating and training managers, supervisors and employees about the policies and their implications.
- Properly dealing with complaints, including taking appropriate disciplinary action

Many employers may think they have the above list covered, but the case of *Allay (UK) Ltd v Gehlen* offers a cautionary tale.

The employer had an Equal Opportunities Policy and provided staff training. The discriminator, who described his behaviour as "racial banter", had received equal opportunities training about 18 months before the discrimination began. However, the Tribunal made it very clear that this was not enough.

The Tribunal found that the training was "stale" and the business had not taken all reasonable steps to avoid discrimination in the workplace. It suggested a reasonable step would have been to refresh the training.

Welcome to our new Draper Lang Quarterly Update. Here we share some employment news highlights and look at what's coming up to help your business planning.

**SO, WHEN YOU ARE PLANNING YOUR YEAR AHEAD, CONSIDER:**

- When were your Equality Opportunities and Discrimination Policies reviewed?
- When were your staff last trained about this? Do you have a record of that training?
- Trans rights are the newest area of discrimination law. Do you and your employees know enough?

ANNUAL HIGH QUALITY REFRESHER DISCRIMINATION TRAINING IS ADVISABLE AND IS SOMETHING WE REGULARLY DELIVER. [TALK TO OUR TEAM](#) IF YOU WOULD LIKE TO KNOW MORE.



## Draper Lang news

We are thrilled to announce that we have been joined by Senior Associate [Debbie Sadler](#). Debbie is an excellent and experienced employment solicitor who is described by the Legal 500 as “*very easy to deal with and inspires confidence in clients*”. We look forward to introducing her to you!

We are also pleased to say that we have a [new website](#) which the Team have worked hard to put together, please do let us have your feedback.

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## Other news

- **COVID-19:** As the new Omicron variant spreads and new measures are introduced, remember that employees may be anxious to avoid catching covid, or wary of being deemed a contact of someone infected and having to isolate - especially over Christmas. As always, as well as being mindful of your health and safety duties and following Government guidelines, also remember to be sensitive to employees' wishes - they might want to avoid the Christmas party for example, or prefer to work from home more to minimise risk.
- **Data loss claim!** A former employee has settled a data breach claim against Tesco for £3,000 after discovering that it had lost her employment records, which covered a period of 15 years. Are your records complete and securely held?

- The **gender pay gap stats have been released**. In April 2021, the gender pay gap for full-time employees was 7.9%. The gap was 7.0% in April 2020 but 9.0% in April 2019, so overall this remains a downward trend. Higher earners experience a much larger difference in hourly pay between the sexes than lower-paid employees. **Women aged between 40 and 49 who work full time experience the highest gender pay gap at 12%**. Childcare and menopause are cited by some analysts as reasons for this, which highlights the need for adequate support from employers.

## COMING IN 2022

The HR agenda will focus on the transition to remote, hybrid or other atypical working, bringing challenges like how to engage, reward, and monitor employees? How to build loyalty, team dynamics and relationships with people who are not regularly in the same physical space? How to protect the mental and physical health of remote workers?

As well as checking your working from home (office) policies, employers may want to consider new policies covering menopause support and baby loss as awareness of the need for employers to support both of these issues has grown.

In all of this, don't forget that HR need support too. Burnout in the profession is on the rise, especially after the last 18 months.

The **EMPLOYMENT BILL** is due to be implemented. This will include:

- the extension of the period of maternity related redundancy protection (during which time new and expectant mothers have priority in respect of suitable vacancies). This will run from when

employees notify their employer of their pregnancy until six months after the end of their maternity leave;

- Making flexible working the default with the right to request it as a day one right;
- legislation to require employers to pass on all tips and service charges to workers. This will be supported by a statutory Code of Practice;
- a single labour market enforcement agency. (to better ensure that vulnerable workers are aware of and can exercise their rights and which supports business compliance);
- a right for all workers to request a more predictable and stable contract after 26 weeks' service;
- a week's unpaid leave for carers.

Consultation on a new right to neonatal leave and pay closed some time ago and recommendations are awaited.

**When know more and have dates that the new regulations will come into force we will update you again.**

**We wish you all a wonderful Christmas and a happy and healthy 2022!**

We love to hear from you, so please [get in touch](#) if you would like to know more about anything featured in this update, or to give us any feedback.

