

Hot air and bra sizes all add to the discrimination mix

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The news that Airbnb has adopted a new anti-discrimination code, following accusations of racism by hosts on the home-sharing site, highlights the growing challenge in managing this increasingly sensitive issue.

Other recent headlines have ranged from EasyJet flight attendants fighting for family-friendly working practices that support them as new mothers, to uproar after the Matching Models recruitment agency specified a bra size and requirement for 'attractive' applicants in its recruiting material.

The Supreme Court is due to decide whether a bus company discriminated when a disabled user was unable to travel, because the wheelchair space was already occupied by a passenger travelling with a buggy, in [Paulley v First Group Plc](#).

And thousands of female shop floor workers with Asda have brought equal pay claims against the supermarket, in a claim for equality with their male counterparts in the company's distribution centres.

It highlights the need for businesses to keep their recruitment and working practices under constant review, if they are to be in step with the continuing developments in this area of the law.

The [Equality Act 2010](#) prevents direct and indirect discrimination based on protected characteristics, which include gender, age, disability, race, sexual orientation, personal relationship status, and religion or belief. The protection of the Act extends to consumers, the workplace, education, public services, private clubs or associations and when buying or renting property.

Questions can be asked about health or disability only in certain circumstances, such as whether someone may need help to take part in an interview, and disability covers both mental or physical impairments and an employer should make 'reasonable' adjustments to accommodate disabled applicants and employees.

In addition, the Act makes it unlawful to discriminate, or treat employees unfavourably because of their pregnancy, or because they have given birth recently, are breastfeeding or on maternity leave. It was on this basis that staff at EasyJet brought an employment tribunal claim against their employer for failing to offer arrangements that would enable them to continue breastfeeding when they returned to work after maternity leave. An employment judge ruled that EasyJet's actions were unlawful indirect sex discrimination and it is likely to mean that employers must be more accommodating in their working arrangements for female staff who are breastfeeding.

On the Airbnb website, hosts can see headshots and have chats before approving a guest, who may be staying in the home together with the host. It's a screening process that far exceeds what is available to a hotel and many African-Americans in the USA reported they were having bookings rejected, leading to accusations of racism and pressure on Airbnb to take action to demonstrate good practice in the matching process it enables between hosts and users.

Our employment lawyer, Karen Cole commented "As the facilitators of the bookings, rather than decision makers, Airbnb held themselves apart from the problem for a while, but now have had to respond to public pressure and take a stance. It reflects the growing pressure on companies to keep up with the far-reaching developments in this area, and it demands a new mind-set for many. For example, it's important not to use language that may imply age discrimination, such as talking about young, old, Millennials or Baby Boomers, or to ask about retirement plans now the default retirement age has been abolished.

“Similarly, you may be breaking the law if any discrimination happens during recruitment, even if you use a recruitment agency. The recent advertisement for so-called ‘attractive’ applicants by Matching Models drew a stinging rebuke for being ‘appalling, unlawful and demeaning to women’ from the Chief Executive of the Equality and Human Rights Commission.”

Karen added: “Next on the horizon for employers is the requirement to publish gender pay gap data and businesses need to prepare now, with their pay audits and communication plans, to be ready to publish against the anticipated April 2018 deadline.

“Embracing equality and diversity needs to be at the top of the agenda, whatever the company size.”

Content note:

This is not legal advice; it is intended to provide information of general interest about current legal issues.

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