

## Marriage and work – A dangerous combination?

A recent case has thrust the thorny issue of relationships at work back into the spotlight.

Some employers frown on the idea of relationships at work – what would happen for example if two of our sales managers were married, and one left to join a competitor – how would I deal with the risk of confidential information making its way to the competitor? Or what would happen if a wife finds herself newly promoted in a team managing her husband?

Relationships at work are more common than you think and the recent case of ***Dunn v Institute of Cemetery and Crematorium Management UK*** shows that this whole area is riddled with the risk of discrimination claims if one party ends up feeling aggrieved.....

Mr and Mrs Dunn worked for an employer (the intriguingly named Institute of Cemetery and Crematorium Management UK – please, no puns about dead end jobs.....) Mrs Dunn resigned as she was unhappy about how the employer had dealt with her formal complaint about proposed changes to her contract of employment. Evidence showed her complaint had been dealt with badly. Her husband had been referred to by the employer in responding to her complaint. Mrs Dunn thought this was irrelevant to her complaint and that this showed that her employer's treatment of her was motivated by the fact that she was married to Mr Dunn – apparently there was no love lost either between the employer and Mr Dunn.

She brought a claim arguing discrimination on the grounds of her being married.

The Sex Discrimination Act 1975 (and the Equality Act 2010 that has replaced it) states it is unlawful for an employer to discriminate against married persons and civil partners “on the grounds” that they are married or a civil partner. The original protection was introduced seemingly because back in the day (the early 1970s) it was common to terminate employment of women when they got married – presumably because it was thought that marriage equalled children. However up until now the law had always been interpreted as applying to discrimination on the basis of the **status** of being married rather than being married to a particular person. For example, if it could be shown that an employer had a policy of preferring to employ single people rather than those who were married in the belief that single people had less domestic commitments and could therefore travel with work or work longer hours, then this would amount to discrimination.

This case turns that on its head. The Employment Appeal Tribunal (EAT) took the view in the end that the employer had acted unlawfully by treating Mrs Dunn less favourably because she was married to Mr Dunn. It said that it was clear on the facts that Mrs Dunn treatment was because of her relationship to Mr Dunn and that she had been “treated as an adjunct to his family”. The EAT referred to a previous case in which the Chief Constable of the Bedfordshire Constabulary was held to have unlawfully discriminated against a female inspector on marital grounds after she was turned down for a job in the division led by her husband because “as the spouse of a serving officer [she] could not work in the same Division because she would not be a competent and compellable witness against her spouse in any criminal proceedings”.

Therefore the defence that it is not marriage per se which we dislike, but the fact that our employee is married to a particular person, will no longer work.

**So, where does this leave us?** Employers need to be cautious when considering any form of action against a married employee or one in a civil partnership that is linked in any way to the fact they are married or in a civil partnership e.g. a rule preventing a person from working with his/her spouse to avoid security risks or the reality or perception of bias or favouritism in staff management decisions. An argument that you would have treated somebody else who was in a close personal relationship in the same way may not be sufficient to defeat a claim of marriage discrimination.