



**Bulletin 154**

**December 2009**

## **DISABILITY DISCRIMINATION LAW AND VOLUNTARY WORKERS**

The Employment Appeals Tribunal (EAT) has recently held that voluntary workers whose volunteering arrangements are non-contractual cannot pursue disability discrimination claims against the organisation to whom they provide services under the Disability Discrimination Act 1995 (DDA).

In order for the DDA to apply, the arrangement between the worker and the organisation must be either:

- (a) One of employment, meaning 'employment under a contract of service or of apprenticeship or a contract personally to do any work
- or
- (b) An arrangement made by the organisation for the purpose of determining to whom employment is offered.

Further, when interpreting the DDA, account must be taken of European law. This requires equal treatment in conditions for access to employment or to occupation, and employment and working conditions. It applies to all types of discrimination and is not limited to disability discrimination.

On the facts before it, the EAT found that the DDA did not apply to the voluntary worker's contract which stated it was 'binding in honour only...and not a contract of employment or legally binding'. Further, the EAT found that the volunteering work which the worker undertook did not automatically lead to paid work or employment within the organisation and that volunteers were not given preferential treatment if they applied for such work. As such the contract between the two parties did not fall within either category (a) or (b) above and so the DDA did not apply.

Whilst the volunteer was not protected by the DDA in this case, some volunteers will be entitled to protection:

- ✓ A 'voluntary' worker who is obliged to provide services to an organisation will most probably have a contract of employment and so be protected
- ✓ Where the purpose of the voluntary arrangement is to determine to whom employment should be offered, either specifically or generally. To bring the arrangement within the remit of the DDA, it must be a necessary step towards employment, i.e. participation in a pre-employment training programme which is necessary before an offer of employment can be made. It is important to note that the potential consequences of an arrangement are irrelevant, i.e. if the arrangement only gets the worker 'a foot in the door' of the organisation.

### **➤ Practical Tips**

- Check the documentation you have in place with voluntary workers. Does this arrangement amount to a contract of employment or apprenticeship? Even if the arrangement did not start off in this way, have circumstances now changed such that a contract of employment may now exist?

- Be aware that any discrimination will be unlawful if occurs under a contract of employment or apprenticeship which results in subjecting the worker to any detriment, or within the arrangements made for the purpose of determining to whom employment should be offered.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to [helen.calvert@brabnerscs.com](mailto:helen.calvert@brabnerscs.com)

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