**Can forcing the use of transgender preferred pronouns amount to discrimination?**

In short, it will depend on the facts!

Background

In the case of Mackereth v (1) Department for Work and Pensions (“DWP”) and (2) Advanced Personnel Management Group (UK) Ltd, the question of whether it was discrimination to refuse to use the preferred pronouns of transgender clients was deliberated.

The Claimant was a Christian doctor and provided health and disability assessments for the DWP. Early in his career, he stated that due to his religious beliefs, he would not use the preferred pronouns of any transgender clients, however this was in contradiction to the DWP’s policies, which stated that those undergoing transition should be referred to by their presented and preferred gender at all times.

Clearly the Claimant was going to be in breach of this policy, so decided to resign and bring a claim in the Employment Tribunal. Christianity, as a religion, is a protected characteristic, but this was not the issue in this case; rather it was whether he could demonstrate that his beliefs that a person cannot change their sex/gender, that it would be irresponsible for a health professional to encourage transgenderism and his lack of belief in transgenderism generally could amount to direct discrimination, harassment and indirect discrimination.

Ruling

The Employment Tribunal held that the Claimant’s beliefs did not amount to protection under the Equality Act, and further, even if they had done, he had not suffered any less favourable treatment/harassment.

Further, the DWP’s policies were justified and were necessary and proportionate in meeting their legitimate aim of ensuring that transgender clients were not discriminated against and were treated with dignity and respect.

The Claimant was clearly not happy with the decision and appealed to the Employment Appeal Tribunal. Unfortunately for him, the EAT agreed with the initial decision, finding that he had not been subject to discrimination. Although, the EAT did point out that some of his beliefs would qualify for protection under the Equality Act.

How does this impact employers?

One reason that the Claimant’s claim failed was that his employer had tried to accommodate his beliefs, but he had resigned before they were able to implement any strategies and adjustments.

Employers should ensure that if they require employees to use certain terms when dealing with transgender clients, the requirement is proportionate to achieving a legitimate aim, for example treating those clients with respect and promoting equal opportunities.

If you would like any further advice, or would like us to review any policies then please get in touch with a member of the team on 01752 663295.