



## “#MeTooPay” – the convergence of sexual harassment and equal pay claims

Since the Weinstein scandal broke in October 2017 and the advent of the #MeToo movement, there has been an ongoing discussion about sexual harassment. The increased awareness may have resulted in employers realising they needed to get ahead of what is a problem both inside and outside of work. It is evident that responses by employers and employees to allegations of sexual harassment have changed too following #MeToo. The Fawcett Society in the UK conducted a survey of women and men in October 2018 which indicated changes in attitudes towards sexual harassment in the year since the Weinstein scandal broke. 38% of respondents said they thought differently about what was and was not acceptable behaviour. 53% agreed there had been a change in what behaviour other people think is acceptable.

The spectre of an increase in claims and a change in attitudes means that now is the time for HR professionals to be talking about sexual harassment. While many big companies on the face of it support diversity and inclusion initiatives the reality is that these issues arise in the workplace on a daily basis. The prospect of having to investigate a live complaint will pose a significant challenge for any organisation. Complex issues often come up around suspension, confidentiality, right to legal representation in some cases as well as the tricky issue of allowing cross examination, where requested, of the person making the accusation as well as what to do when there is a live criminal investigation relating to the sexual harassment. Most of this can be addressed with a carefully drafted Anti-Harassment and Disciplinary Procedure together with legal advice.

It is really interesting to note that the debate has now taken another turn with the convergence of pay equity claims and the “#MeToo” movement. This is demonstrated by the emergence of the “#MeTooPay” movement where more than 100 successful women in the UK have launched a campaign to end pay discrimination. The group was launched in response to the very recent case of Stacey Macken v BNP Paribas – UK 2019 in which a senior female banker was paid less than her male colleague. Stacey Macken was recruited on an annual salary of £120,000 compared to the £160,000 offered to a male colleague recruited into the same position some months later. A forensic analysis of her role and the comparators role led to a decision by the Tribunal that she was entitled to equal pay. The Tribunal accepted the evidence that she was continuously treated as a junior hire with her experience underplayed compared to the male banker who was treated as a

senior hire and his experience over-played. The false distinction between senior and junior continued to affect pay reviews and awarding of bonuses. There was evidence of affinity bias displayed in pay reviews where the male comparator and his personality was deemed to fit in culturally whereas the female banker experienced hostile working conditions, including leaving of a witch’s hat on her desk by a co- worker, which the Tribunal held was “*an inherently sexist act that potentially reflects on the nature of the working environment for the Claimant and the approach that was taken to women*”. It is clear that the combination of a toxic work environment and biased pay practices in this case resulted in gender pay inequality resulting in her claim for equal pay being upheld.

While Ireland is in the process of enacting gender pay gap legislation obliging employers to publicise details of their gender pay gap, there are concerns that the pay of many high earners of partners in law firms and accountancy practices will be mostly excluded because they are not deemed to be employees under the proposed legislation. In the US, the word is already out as female partners in legal practices are waking up to the gap in their pay compared to their male counterparts and are issuing and mostly settling gender discrimination claims. They are citing a systemic culture of gender discrimination, a fraternity culture, use of subjective performance evaluation systems that favour men, sexual harassment, withholding of bonuses and exclusion from high fee generating work. As always, the cases that actually issue are often just the tip of the iceberg as many cases are settled before or after proceedings are issued.

The #MeTooPay group in the UK have indicated that while pay gap data that is coming out is “*depressing*” it is also “*galvanising*” and it is certainly interesting to see the spotlight land on pay equity two years on from when the “#MeToo” movement took off to highlight the issue of sexual harassment and discrimination against women. Watch this space!



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