



HR Broadcast – Wearing Religious Symbols at Work

Everybody will be aware that you cannot discriminate against somebody on the grounds of their religion or belief. But what happens if there is a conflict between company dress policy and the desire by many individuals to express their religion by means of a symbol, for example a headscarf or a cross?

This is something of a minefield for employers, which is not made any easier by varying attitudes in the European Court of Justice.

Suppose you as an employer, mindful of your obligation not to discriminate, choose to have a blanket ban against any form of religious symbolism. Can that amount to religious discrimination when, you would argue, you are making the same rules for everybody in order to achieve consistency?

There is no doubt that employers have a right to establish a dress code, for example in order to create a corporate identity or because it might be essential for that particular job, or for health and safety reasons. The question is, where is the dividing line between the right of the employer to manage his or her business and the religious rights of the employee?

An Advocate General (AG) is a lawyer appointed by the European Court of Justice to provide an initial legal opinion. The opinion is not binding but is influential. It is for the Court to make the final decision.

Very recently two different AGs have come up with rather varying opinions on whether or not

Muslim women being forbidden to wear headscarves by their employers amounts to religious discrimination.

G4S operating in Belgium had a policy of what they called "religious and ideological neutrality". They permitted no symbols at all. The employee, Ms Achbita, insisted on wearing her headscarf and was dismissed. It is common for national courts to refer questions of principle to the European Court for guidance. In this particular case the AG took the view that it was legitimate for an employer to try to create a neutral religious environment through a dress code which would apply to all employees.

At this point it is perhaps worth identifying the difference between direct and indirect discrimination. An example of direct discrimination would be for an employer to ban persons of a particular religion from the workplace. An example of indirect discrimination would be to ban the wearing of headscarves; this would be an example where Muslim women would be more affected than any other group and so this would be indirect discrimination.

In the G4S case the AG decided that this was not direct discrimination because everybody was subject to the same rules and while this could be indirectly discriminatory it was likely to be justifiable. Having a religion was not a choice but the way in which it was manifested was a choice.

Compare that approach with a case arising from the French labour courts. It is worth remembering that France, as a secular country, has had a



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number of difficulties in banning use of religious symbols in public places. We will remember the very recent conflict between police and a woman on a French beach who happened to be covered up because of her religion.

In this case the employee was a Ms Bagnaoui who carried out IT functions at customers' premises. A customer did not want her to wear a headscarf in future, she refused to comply, and was dismissed.

In this case a different AG took a different approach. The employer had argued that its requirement for this lady not to wear a headscarf was based on commercial grounds and to encourage a neutral appearance, even though this could not be described as an occupational requirement as required by the customer.

This AG identified a clear distinction between manifesting a religion, for example wearing a headscarf, and actively promoting that religion. In this case the opinion was that freedom to manifest a religious belief took precedence over profit. Wearing a headscarf or, for example, a turban, could not be examples of acting inappropriately towards clients and the AG made the point that it was artificial to recognise that sex and skin colour always accompanied an individual but that religion did not.

This did amount to direct discrimination and was likely also to be unjustifiable indirect discrimination.

Both of these different approaches will be put before the European Court of Justice and it is hoped that some clear guidance will be given identifying the boundaries, however difficult in practice this may be.

As far as the U.K. is concerned we tend to lean towards the approach that a blanket ban is unsupportable, and that we must allow a degree of individuality and expression by the wearing of symbols, as long as this does not cross the line of health and safety requirements or genuine occupational needs.

Many of you will have read about the case of Ms Eweida who was a British Airways check-in person. She wanted to wear a visible cross over her uniform but BA argued that this contravened their uniform requirements. There was no blanket ban as in the G4S case and the employer succeeded all the way to, and including, the Court of Appeal. At all levels the courts concluded that this was a legitimate aim of BA.

Ms Eweida took her case to the European Court of Human Rights where she was successful. This European Court concluded that the ban on wearing a cross on top of a uniform could not be objectively justified as it really did not affect the corporate image of the employer.

This is perhaps a good example of where the lack of supremacy of the British courts will change in the future, but for the moment we will continue to be influenced by European decisions.



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At present, and subject to the ECJ decisions to come, British employers would probably be unsuccessful in adopting a blanket ban and would need to consider very carefully whether there is either a genuine operational reason for banning symbols or alternatively, whether there is an applicable health and safety argument.

What is recognised is that there is a clear distinction between modest manifestation of a religion and trying to convert others, which would not be acceptable.