

Employment E-Brief No. 98

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INFERENCES OF DISCRIMINATION FROM EVASIVE REPLIES

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When bringing claims of sex or race discrimination an individual can issue a statutory questionnaire to the employer. This is designed to enable the individual to elicit information on the allegations being made.

The legislation dealing with these questionnaires says that evasive, incorrect or a simple failure to reply to the questionnaires can lead to adverse inferences being drawn by the tribunal.

The EAT has now said that a similar inference can be made even if the questions are not asked under the statutory procedure (to which strict time limits apply).

The policy being that if the companies are asked a direct question in writing by an aggrieved person and then fail to respond, or do so evasively, they ought to be treated the same way irrespective of whether the question has been asked under the statutory procedure.

Employers need to be aware of this rule since questions asked outside the statutory procedure won't expressly say (as the statutory questionnaires do) that an evasive or equivocal reply can lead to a drawing of an adverse inference.

If you are faced with a claim from an employee concerning discrimination it is sensible to involve your legal advisors the moment the claim comes through the letter box.

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