Law360 article – Lacoste Flexible Working Ruling Acts As Alert To Employers

In a recent article for Law360, BDBF Principal Knowledge Lawyer Amanda Steadman discusses the recent EAT decision of Glover v Lacoste UK Ltd which demonstrates that employers should take careful consideration when handling requests for flexible working, especially those received from absent employees. Amanda uncovers the key learning points for employers here.

Lacoste Flexible Working Ruling Acts As Alert To Employers

By **Amanda Steadman** (March 13, 2023)



Amanda Steadman

In Glover v. Lacoste U.K. Ltd. last month, the U.K. Employment Appeal Tribunal said that the rejection of a flexible working request on appeal resulted in the application of a potentially discriminatory working pattern on the employee.[1]

This was the case even though the employer later changed its mind and the employee had never had to work under the unwanted working pattern.

What Happened in This Case?

Melissa Glover worked for Lacoste as an assistant store manager. She worked five days out of seven per week, with the working days set out in a rota provided to her every four weeks. She went on maternity leave in March 2020 and her store closed during the COVID-19 pandemic.

In November 2020, Glover made a flexible working request asking to work three days per week. Lacoste rejected her request at the initial stage and also on appeal, although it offered a compromise of four days per week to be worked on a fully flexible basis, i.e., on any day of the week, including weekends. No further right of appeal was offered.

Glover felt that the requirement to work on any day of the week would be impossible given her child care commitments. Her solicitor wrote to Lacoste asking for the original request to be reconsidered, failing which Glover would constructively dismiss herself.

In April 2021, Lacoste relented and agreed to the original request to work three days per week. At the time, Glover had been absent on furlough and so had never had to work under the four-day-week working pattern proposed by Lacoste. After Lacoste reversed its position, she returned to work.

Glover went on to present a claim for indirect sex discrimination. She said that Lacoste's requirement to work fully flexibly across the week was discriminatory because it put women at a disadvantage compared to men, due to the fact that women still have primary responsibility for childcare, and it also put her at a disadvantage individually.

The employment tribunal rejected the claim on the basis that the requirement had never, in fact, applied to Glover in practice because Lacoste had reversed the decision before she had returned to work.

This meant that she had not suffered any individual disadvantage. However, the tribunal went on to say that had the requirement been applied to Glover then it would have been discriminatory and could not have been justified.

With funding from the Equality and Human Rights Commission, Glover appealed the decision.

What Was Decided?

The employment appeal tribunal allowed the appeal. In particular, it noted that the tribunal had misinterpreted previous case authority when deciding whether Lacoste's discriminatory requirement had been applied to Glover.