

Layoff and Harassment of Gay, Deaf Landscaper was Discriminatory



Landscaper worked for only six weeks before being laid off. The deaf landscaper interviewed for the job with the assistance of an American Sign language interpreter and upon hiring the parties agreed to use a note pad to facilitate communication. Soon after beginning his job co-workers began to get impatient with using the notepad to communicate and would often complain. The owner also made sexual and homophobic gestures toward the landscaper, in front of other employees, who laughed. The landscaper was in fact gay but hadn't announced it to co-workers. The landscaper claimed harassment on basis of sexual orientation. The tribunal found the sexual and homophobic comments and conduct toward the landscaper were harassment. Even though the owner didn't know the landscaper was gay, the tribunal said a reasonable person wouldn't assume everyone was heterosexual and should know that such comments would be unwelcome to gay men. These comments, made in front of co-workers, created a poisoned work environment. The tribunal also ruled the layoff was discriminatory and based on his deafness given the close timing between co-workers becoming impatient and complaining about having to communicate via note pad writing and the layoff. Additionally, the tribunal said the employer failed to accommodate the landscaper's disability because no other communication solutions were attempted. The tribunal awarded money damages for injury to dignity and loss of income and ordered the employer to provide the landscaper with a letter of reference.