

Employment Law Update

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Plans to extend shared parental leave to working grandparents

The Government has announced that working grandparents will be able to share parental leave and pay in the future. It will begin to consult on how this will work in the first half of next year with a view to implementing the change in 2018.



Public interest in Whistleblowing

A recent case has suggests that it will be a low threshold to satisfy an employment tribunal that a disclosure was in the public interest. Although the intention behind the recent change in the law was to avoid normal employment disputes being subject to whistleblowing protection, the EAT ruled that the phrase “in the public interest” was to be interpreted widely and as such a complainant who felt that he wasn’t being treated as fairly as other drivers in relation to overtime was nonetheless protected under whistleblowing legislation as he had complained that drivers such as himself had raised concerns relating to the safety of their vehicles.

Facebook and misconduct – employer knew about comments for 6 months before acting

An employee made derogatory comments about his employer which he had posted on Facebook 2 years prior to him being subject to disciplinary action. His employer knew about these

comments at least 6 months prior to the dismissal. Somewhat interestingly, the EAT held that this was still a fair

dismissal even though the employer had not acted straightaway. Although the employer won the case, it is best not to address matters until much later and it is always sensible to have a social media policy that factors in how to address ‘on-line posting’ issues.

Penalty clauses

If a Court interprets a clause in a contract of employment as a penalty clause, its provisions are unenforceable. In the HR world, this can be particular relevant with regard to clauses related to repayment of training courses if an employee leaves or to do with restrictive covenants. The Supreme Court has recently given guidance on how to assess whether a clause amounts to a penalty. The key question is whether the clause imposes such a detriment on the contract breaker which is “out of all proportion to any legitimate interest of the innocent party”.

Disability Discrimination- reasonable adjustments – competitive interviews

An employee had worked for the NHS since 1984 but following a restructure he was at risk of redundancy. He qualified for protection as he had cancer but he still was required to undertake a competitive interview. He was unsuccessful. It was held that this was a breach of the duty to make reasonable adjustments - the employer could have used appraisals or some other form of assessment, although it did not go as far as to say that it was wrong to have no assessment at all.

Unfair Dismissal – consistency arguments

Employees often argue that a dismissal is unfair because another employee was not dismissed in similar circumstances. The EAT has in a recent case seemed to reduce the chances of this argument succeeding because it stated that the relevant question is whether the employer has acted reasonably towards the person who has been dismissed, regardless of the sanction that had been applied to the other employee. It also was relevant as to whether the circumstances related to the other employee were truly parallel to the case in question.

Whilst every effort has been made to ensure that the content of this update is up-to-date and accurate, no warranty is given to that effect and nplaw does not assume responsibility for its accuracy and correctness. The update summarises latest legal developments but is no substitute for specific legal advice after consideration of all material facts and circumstances.

Equal Pay and Gender pay reporting

Another big employer is facing a multi-case



Equal pay action. You may already be aware that Asda is facing such a claim but it now appears that Avery Health Care Ltd are being sued. As a tip it's worth checking that any assumptions for pay differentials are

based on up to date data as if it isn't, an employer is likely to be unable to defend an Equal Pay claim.

It is also over the horizon for next year that public sector employers will have to provide more information in relation to gender pay gap reporting. This is consistent with previous announcements related to doing this in the private sector for larger employers.



ACAS guidance on conducting investigations

ACAS have recently published new guidance on how to conduct investigations

(www.acas.org.uk). It goes without saying that this will be relevant as to whether any dismissal was fair and whether any procedures followed were reasonable. Some of the advice is quite practical such as the section on how to write a report. Essential reading !!

Public Sector Exit payments

The Autumn Statement confirmed that this is going to be capped at £95K subject to which for Local Authorities will need the consent of the full Council if it wishes to exceed that limit. Draft regulations have now been published.

HMRC publishes "Travel and subsistence" discussion paper

HMRC has recently published a discussion paper on these issues because it wishes to clarify the rules and apply objective tests. The issue of where is an employee's "main base" is a one that HR practitioners should address.



Bad faith – Unfair Dismissal

A recent EAT case has flagged up that if allegations of bad faith are a key part of their decision when analysing the range of reasonable responses, they must be put to the employer at the hearing. Similarly, if an employee alleges bad faith, it's essential that any panel at an internal hearing ensures that they have thoroughly questioned the employer's witnesses on this point.

Code of Practice on Picketing

The Government has indicated that the ACAS Code of Practice on Picketing will be updated to take into account social media activity. Given that the Code was last looked at in the 1990s, this is not a complete surprise. The Government has also indicated that it is dropping its



proposals to require unions to publish in advance their plans for industrial action, picketing or social media campaigns.

Transgender Staff

The UK government has published new guidance regarding the recruitment and retention of transgender staff. (www.gov.uk)

In the news

Nplaw have been successful in winning a number of Local Authority and Health Authority contracts.

Wishing you all a Happy Christmas and New Year

If you have any queries relating to this update or wish to seek employment law advice or discuss training needs, please contact:

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