

### Queen's Speech- Trade Unions



Already the Government has several bills with employment implications passing through Parliament.

In relation to union ballots, a minimum of 50% of voters entitled to vote, must vote. For industrial action in health, education, fire and transport services, there is an additional requirement that 40% of those entitled to vote, vote in favour.

There are other measures preventing intimidation of non-striking workers, time limits on mandates following a ballot for industrial action, provisions relating to opting in for the political fund element of trade union subscriptions.

### Queen's Speech – Redundancy

The Government is introducing a cap of £95,000 for payoffs in the public sector due to redundancy.



### Collective Redundancy 'Woolworths' case

The European Court has ruled on the meaning of one establishment and indicated that an establishment means the entity to which workers made redundant are assigned to carry out their duties. Although this case will be returning to the Court of Appeal, it is likely that each separate work location will be viewed as a separate establishment.

### Queens's Speech – Human Rights, Immigration and Extremism Bill

The Human Rights Act is going to be reviewed with a view to introducing a new British Bill of Rights.

Illegal working will be made a criminal offence. It will also be illegal for employers to recruit from abroad without advertising in Britain first. In the Extremism bill, this will allow employers to check whether an individual is an extremist and bar them from working with children.

### Unilateral changes to contracts

In *Cartwright v Tetrad Ltd*, a company imposed a 5% pay cut on its staff as it was in financial difficulties without obtaining their express consent. However as the employees and their union failed to object to this for 5 months, the EAT held that as they had failed to object or make it clear that they were working under protest, they had accepted the variation to their contract. Obviously, to act this way is a high risk approach, especially when it relates to matters of pay, as it might also lead to constructive dismissal claims.

### E-cigarettes

A recent Employment tribunal decision stated that an employee who was smoking an e-cigarette had not committed gross misconduct as their smoking policy did not cover e-cigarettes. In light of this, please update your policies to reflect how seriously you wish to treat this issue.



*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.*

## National Minimum Wage (NMW)

The Department for BIS has updated its guidance on calculating NMW – [www.gov.uk](http://www.gov.uk). Please bear in mind that the Government is continuing to crackdown on this issue. There is guidance related to staff who are 'on call'.



## ACAS CODE and Guidance on Disciplinary and Grievance Procedures has been updated on Right to be Accompanied

The new revised code and non-statutory guidance can be found at [www.acas.org.uk](http://www.acas.org.uk). To exercise the statutory right to be accompanied, a worker must make a reasonable request to be accompanied by a work colleague or a trade union official/ representative. What the Code makes clear and reflecting the recent EAT case of Toal v GB UK Oils Ltd is that this relates to the making of the request and not to the employee's choice of companion. What is reasonable will depend on the facts of the case.

## TUPE - discrimination - disability

An employee objected to transferring over as she believed that the new employer (transferee) would not make reasonable adjustments and so remained with her existing employer (transferor). The key point to note is that the EAT has ruled that she could bring a claim against the transferee, notwithstanding that she remained with the employer. If you are in a TUPE situation, you must look very carefully at what adjustments can be made otherwise you risk a claim even if the employee does not transfer over.



## Whistleblowing - Public interest test

This was analysed for the first time in the EAT. When it comes to making a disclosure in the public interest, the worker must have reason or belief that the disclosure was in the public interest. It didn't matter whether ultimately the worker was wrong on whether their disclosure was in the public interest, all it had to be was objectively reasonable. Secondly, the EAT emphasised that the aim of the revised test was to avoid opportunistic use of breaches of an individual's contract that were of a personal nature but it was not intended to bring in any wider form of public interest test.

## Government announces review of Employment Tribunal Fees

The Government has announced that it expects to report its review into employment tribunal fees towards the end of the year. Currently, there is a challenge in the Court of Appeal on this.

## Strike pay reductions

The Court of Appeal held in the case of Hartley v King Edward VI College that when workers went on strike, the amount of deduction that an employer was entitled to make was one working day's pay as opposed to one calendar day's.

## Holiday Pay

One to look out for: In the case of Lock v British Gas, following a European Court ruling, the Employment Tribunal ruled that commission should be taken into account when calculating holiday pay.



British Gas are now appealing this and we would anticipate that this will be heard at the end of 2015.

## Latest news

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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