Employment Law Newsletter

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Rest breaks – no injury to feelings award

The Employment Appeal Tribunal has ruled that where an employer failed to provide for rest breaks under the Working Time Regulations, there is no right to an award for injury to feelings. It might be possible for a claim to damage to health if an employee was ill due to lack of breaks.

Human Rights

The Equality and Human Rights Commission (www.equalityhumanrights.com) has recently published new guidance that outlines how employers can ensure that they comply with UK and international expectations.

Queen's Speech - British Bill of Rights

The Government has announced in the Queen's speech that it is going to bring forward a British Bill of Rights.

Attendance management provisions in a staff handbook were contractual

A recent Court of Appeal ruling provided that provisions in a staff handbook which related to absence management were contractual and hence the employer's attempts to change their provisions needed the agreement of the staff. The Court placed emphasis on the intentions of the parties, the fact that it was sufficiently precise and clear and contrasted this with other provisions that read more like guidance. Although the issue of incorporation turns on its facts, it's always sensible for HR to make it clear in their policies as to whether a provision is meant to be contractual.

Twitter

A word of caution for anyone who is regulated by a professional body. An accountancy professional was fined £3000 for inappropriate tweets essentially on the basis that they brought the profession into disrepute notwithstanding that he was providing his own views. We would recommend that there is guidance given to staff on use of social media.

Employer must not write to stressed staff over trivial issues when they are ill

The Employment Appeal Tribunal recently ruled in a situation where an employee had been off with work-related stress and the employer wrote to her in relation to trivial matters that could wait. This was enough to destroy trust and confidence and enable the employee to successfully claim constructive dismissal. It was not enough to show that the employer had been guilty of harassment on grounds of disability as it had not been shown that the letter's purpose was to create a hostile environment. This is a clear warning for HR to focus on important matters and to wait until the employee feels better before discussing more minor issues.

Disability Discrimination

A wheelchair using employee was due to attend a course but could not access the venue because it was held in the basement which did not have disabled access. This employee was dismissed as he used offensive language when making his complaint about this. The Employment appeal tribunal accepted that this could constitute a complaint of unfavourable treatment arising from a disability as the cause of his action was related to his disability and did not accept the employer's argument that it was purely due to his outbursts. This suggests that it is a low threshold to show the causal link between the disability and the unfavourable treatment. It will be for a later hearing to determine whether the employer's actions had a legitimate basis and were proportionate.

Pension loss in Employment Tribunals

The President of the Employment Appeal Tribunal is currently consulting on how to calculate pension loss in the employment tribunal. In public sector cases, this can be quite significant given that very few private sector employers still have final salary schemes. This will be relevant to any discussions that relate to termination of employment and any settlement discussions.

Whistleblowing- no requirement to raise a concern

Whistleblowing cases often revolve around whether an employee has provided specific information as opposed to just raising concerns. Justice Langstaff accepted that the reality is that these issues are often intertwined but confirmed that the question is simply whether information has been provided- it does not matter whether it also raises a concern to come within the protection afforded to whistleblowers.

Whistleblowing- low public interest threshold

It also appears that the threshold for showing that a disclosure is in the public interest is going to be a low one. An employee of the Royal Mencap Society complained that she worked in cramped working conditions and that this impacted on her health. The EAT held that an employment tribunal was wrong to strike out the claim on the basis that it lacked the element of public interest. This decision shows that the Courts are watering down the law that was introduced to prevent this type of claim, since on our view of the facts it seems to relate more to an individual's own circumstances and is not of wider public interest significance.

National Living and Minimum Wage

Just a reminder- the national living wage came into force on the 1st April which means that workers aged 25 and over will receive £7.20/hr.

From the 1st October 2016, the rates for the national minimum wage will increase to £6.95/hr for workers 21-24, £5.55/hr for those 18-20 , £4.00/hr for those who are under 19 but above compulsory school age who are not apprentices and the apprentice rate will be £3.40/hr.

Trade Secrets Directive

One to look out over the horizon : the European Parliament has just approved a new trade secrets directive which will create legal minimum standards to protect secret and valuable business information.

Religious discrimination

The EAT upheld disciplinary action taken against an employee for improperly promoting Christianity to a junior colleague. It did not accept that this was religious discrimination because there was a distinction between an employee who is disciplined for manifesting a belief as opposed to the facts here, where there was pressure against a junior employee and it was unwanted/non-consensual and an issue of taking advantage of their position against a subordinate.

Information Commissioner– mobile phone apps

The ICO is to launch a new campaign targeting privacy compliance of mobile phone apps made available to the public. The concern is that these apps are secretly recording all kinds of data. If anyone is thinking of developing an app, they need to bear this in mind and other guidance that it has issued in relation to this.

Unfair dismissal - sickness

Not a huge surprise but the EAT has confirmed that where an employer has a genuine and reasonable belief that an employee has deliberately exaggerated their condition and hence claimed sick pay/leave that was unmerited that such action is a fundamental breach of contract and may justify dismissal. Obviously, the investigation needs to be thorough enough to be sure of the facts and that there are no mitigating circumstances.

Public Sector exit payments update

The draft public sector exit payments that were published in November 2015 sought to impose a limit of £95,000 on the aggregate exit payment that could be made to public sector workers. HM Treasury has confirmed that this will not come into force before 1st October 2016. We will let you know when we have any more concrete news on this issue.

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