

Employment Law Update

January 2005

This month's bulletin is a review of recent and forthcoming legislation together with the roundup of those not to be missed cases!

From 1st October 2004:

• **Right to be accompanied**

Compensation for failure to allow an employee the right to be accompanied at a grievance or disciplinary hearing increased from a statutory maximum of £540 to £560 (capped at 2 weeks pay).

At the grievance or disciplinary hearing the role of the companion has also been extended; now the companion can put the employee's case, sum up the case, respond on the employee's behalf to any view expressed at the hearing and confer with the employee during the hearing.

• **New Dispute Resolutions Procedures**

There are now statutory minimum disciplinary, dismissal and grievance procedures. If you fail to abide by them, any compensation awarded by an Employment Tribunal to an employee could be increased by 10 to 50%. Your policies must be updated to incorporate these new procedures.

• **National Minimum Wage**

The national minimum wage has increased to £4.85 for adult workers, £4.10 for workers aged 18 to 21 and £3.00 for those under 18.

• **Disability Discrimination**

The small employer exemption has been removed. The Disability Discrimination Act 1995 now applies to all employers irrespective of its size.

There is a new additional definition of disability discrimination and harassment

You can no longer justify a failure to make reasonable adjustments.

There is further protection for disabled ex employees against post termination discrimination e.g. in the provision of a reference or the conduct of an appeal hearing.

From 1st February 2005:

- Unfair Dismissal basic award increased from £8,100 to £8,400.
- Unfair Dismissal compensatory award increased from £55,000 to £56,800.
- Maximum statutory redundancy pay increased from £8,100 to £8,400.
- Statutory cap on a weeks pay for unfair dismissal and redundancy pay calculation increased from £270 to £280.

Legislation - looking forward

• **Draft Disability Discrimination Bill**

In April of this year, people with HIV, Multiple Sclerosis and some forms of Cancer will be deemed to be disabled for the purposes of the Disability Discrimination Act 1995.

• **Information and Consultation**

New rules from April 2005. The regulations set out minimum rights for employees to be informed and consulted by you in respect of a number of work place issues. Initially, the regulations apply to businesses with 150 or more employees, but will be extended to all businesses with 100 or more employees by March 2007 and to all businesses with 50 or more employees by March 2008.

• **Age Discrimination**

The UK government must implement regulations prohibiting age discrimination by 1st October 2006. There will be a general prohibition on discrimination on the grounds of age, there will also be protections against harassment and victimisation.

Case Roundup

• **Holiday Pay**

Bamsey and Others -v- Alban Manufacturing PLC

In this case, the Court of Appeal held that compulsory but not guaranteed overtime does not need to be taken into account when calculating a weeks pay for holiday pay purposes.

• **Disability**

Archibald -v- Fife Council

This House of Lords case is an important decision. Where you have a disabled employee who is no longer capable of carrying out their role because of their disability, you must consider alternative employment. You should not only consider roles at a similar or lower level, you need to give thought to positions which would amount to a promotion. You should not require the disabled employee to go through a competitive interview process. Clearly, though, it will depend upon the facts.

• **Unfair Dismissal.**

Strouthos -v- London Underground Limited
Useful reminder that it is essential that you take into account an employee's length of service and previous disciplinary record when determining what the appropriate sanction should be in cases of misconduct.

Furthermore, you must ensure that when you write to the employee setting out the allegations against him or her, you must make clear exactly what those allegations are from the outset. If you fail to properly charge the employee with the specific offence against them, you cannot then discipline them. You can only discipline an employee for an offence which you have put to them and found them guilty of.

• **Bonus**

Horkulak -v- Cantor Fitzgerald International.
The employee's contract provided that the company "may at its discretion, pay you an annual discretionary bonus". The court held that where a discretion is provided in the contract, it is subject to an implied term that it will be exercised genuinely and rationally. You cannot exercise this discretion purely at your will.

• **Constructive Dismissal**

Judge -v- Crown Leisure Limited

A manager, at the office Christmas party, promised to an employee that he would get a substantial pay rise within two years. The employee did not get this promised pay rise and resigned claiming constructive dismissal.

The Employment Tribunal held that the original promise was not contractually enforceable. In reaching this decision the Tribunal took into account the circumstances in which the conversation took place, who was present and the general atmosphere.

The case highlights how crucial it is to exercise caution when you are at social events. If you want to offer someone a pay rise, tell them that promotion is just around the corner or raise performance issues, you must only do so in a formal setting and make sure the conversation is minuted. If you fail to adhere to this principle, you could find that what you say in a social environment is misconstrued or relied upon.

For further advice on any of the above changes please contact any member of the employment team:

Stephen Jackson - Head of Employment

Kalpana Murthy - Solicitor

Jeya Thiruchelvam - Solicitor

Harding Evans Solicitors

Queens Chambers

2 North Street

Newport

NP20 1TE

Tel: 01633 244233

Fax: 01633 246453

Email: info@hevans.com

Web: www.hardingevans.com

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