

# Employment Club Update

August 2010



## New Anti Discrimination Provisions on Goods and Services

The "core provisions" of the Equality Act 2010 are to come into effect on 1st October. However, there was some uncertainty as to what those core provisions were. It is now clear that the provisions outlawing discrimination in the provision of goods and services will come into force then.

Whilst most businesses will be very aware of their obligation to enable persons with disabilities from being able to access goods and services, many businesses are wholly unaware that they will not be able to discriminate against people in the provision of goods and services on such grounds as sexual orientation, religion, pregnancy and race.

The provisions also reinforce and extend existing rules on indirect discrimination, harassment and discrimination by association.

It is therefore vital that businesses get to grips with the implications of the legislation and put in place policies to ensure that they do not breach the provisions of the legislation as both employers and employees can be individually and jointly liable for acts of discrimination.

Staff awareness and training on the new provisions together with clear policy guidance is the best way to avoid claims in what is likely to be an increasing area of activity for employment tribunals to deal with.

## Effective Date of Termination

An agreement that an employee who handed in his notice could leave his employment early was not effective in bringing forward his effective date of termination.

The employee asked to leave before the end of his notice period on 1st December. By a letter dated 26th November 2008 the employer wrote to the employee stating "you can be released today and will still be paid up to and including your notice period date of Monday 1st December."

The employee issued a claim against his former employer on 28th February 2009. The Employment Appeal Tribunal held that he had issued the claim within the 3 month period following the termination of his employment.

## Fraudulent Employee Had To Pay Employer's Costs

An employee who had defrauded his employer through false accounting and who ran his own business in competition with his employer from his employer's own business premises was found to have been unfairly dismissed on procedural grounds.

However, the outcome was something of a pyrrhic victory.

Not only did the Tribunal reduce his damages by 100% because his dismissal was wholly attributable to his own fraudulent conduct but the Tribunal also ordered him to pay his employer's costs as he had not "...approached the essential factual matters that lay at the heart of [the] case honestly and reasonably."

## National Minimum Wage Update

The Government has now published regulations which increase the principal NMW from £5.80 to £5.93 from 1st October and will be payable to workers aged 21+ (and not 22+ as previously).

The NMW rate for workers aged between 18 and 20 rises from £4.83 to £4.92. Workers under 18 see their NMW increase from £3.57 to £3.64.

A NMW for specified apprentices is introduced at £2.50 per hour. The amount employers can charge workers for accommodation against their minimum wage rises from £4.51 to £4.61 per day.

The Government has also announced the Abolition of the Agricultural Wages Board which set minimum wages for agricultural workers.

## Tribunal Claims Increase

The Tribunals Service has published its annual statistics for 2009/10 and show an increase in claims of 56%. The figures are skewed by a 90% increase in multiple claims of employees against large employers. However, there is an increase of 14% in relation to individual claims.

Of the claims disposed of, 32% were withdrawn, 31% settled through ACAS and 13% of claims succeeded at a Tribunal hearing.

The Tribunals Service has responded by the recruitment of additional employment judges and reducing hearing times by a new "aggressive" case listing policy.

More telephone Case Management Discussions are likely to save time. However, despite regional variations, delays in listing hearing dates are though to be inevitable as a result of the increasing volume of cases in the system.

*These notes are for guidance purposes only. We believe the contents to be correct but it should not be taken as sufficiently accurate or full to apply in any specific situation without first referring to us. We would be pleased to advise on any specific issues or problems.*

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**Postal Address:** Devonshire House, Riverside Road, Pottington Business Park, Barnstaple, Devon, EX31 1QN

**Telephone:** 01271 341000 **Fax:** 01271 344445 **Email:** [jon.dunkley@tollerbeattie.co.uk](mailto:jon.dunkley@tollerbeattie.co.uk) **DX:** 34954 Barnstaple



For more information please speak to the head of our employment department Jon Dunkley or visit our website