

Employment Club Update

July 2010



Solicitors Fall Foul of the Law in Giving a Reference

A firm (now PWW) that 'gratuitously' referred to a solicitor's prior discrimination claim against them when providing a reference for her was found to have victimised her contrary to the Sex Discrimination Act 1975.

Perhaps ironically, the solicitor, Susan Bullimore, was a salaried partner in the dispute resolution department! The solicitor had brought claims for sex discrimination and constructive unfair dismissal against her employer in 2004 after they refused to admit her as an equity partner in the firm.

In a compromise agreement entered into at the time, the firm agreed to provide the solicitor with a reference "consistent with those already provided." A rather 'bland' reference was provided by the head of the department, Peter Hawthorne, when she left and joined a new firm in 2004.

Then, in a bizarre incident, Bullimore's father crashed his car into Mr Hawthorne's car which was parked outside his house causing considerable damage. It was consistently maintained that this was a co-incidence.

In 2008, Bullimore applied for a job and Mr Hawthorne gave a reference referring to her poor relations with colleagues, her inflexible opinions and unnecessarily referring to the previous sex discrimination proceedings.

Bullimore received £7,500 for injury to feelings arising from the 'victimisation'. It is understood that she has appealed against the award.

Redundancy Score Discriminatory on Grounds of Sex

A Tribunal has held that a firm of solicitors unfairly dismissed a male solicitor and unlawfully discriminated against him on grounds of sex when it artificially inflated the scoring of a female colleague who was on maternity leave.

The male employee was given the minimum score of 0.5 in relation to fee payment periods whereas his female colleague was awarded the maximum score of 2.0. It was claimed that she would also have scored 0.5 on the same criterion but for her pregnancy and the artificial 'uplifting' of her score.

It is believed that an appeal is being considered.

Conditional Resignation Is Not A Resignation

An employee who brought a claim before a Tribunal more than 3 months after submitting a conditional resignation was not out of time in bringing a claim.

The employee had actually resigned several days later stating that it was effective from the date of his conditional resignation.

It was held that he actually resigned on the later of the two dates despite his stated intention to resign from the first date. This is because the date of termination is a statutory construct and cannot be varied by the intentions of the parties. He had therefore inadvertently submitted his claim within the 3 month period.

Flexibility Most Valued Benefit

A survey by Price Waterhouse Coopers has found that 47% of workers surveyed rated flexible working as the most important benefit, giving weight to the Government's proposals to extend flexible working to all employees.

In contrast, only 19% of those surveyed thought that performance related benefits were the most important benefits.

The survey also found that exactly 50% would prefer to work for themselves in the future than be employed.

Copying CCTV Footage Unlawful

A Tribunal has held that an employee who copied CCTV footage of other employees being lazy in case he ever needed evidence to defend himself against such allegations was lawfully and fairly dismissed. He was the subject of a previous warning for similar misconduct.

According to the EAT, "...the Claimant had acted furtively and it must be clear to anyone that the downloading of images is wrong."

Unfair Dismissal Time Limit

An employee who missed the 3 month deadline for submitting an unfair dismissal claim because his employer mistakenly informed him that the time limit ran from the date of rejection of his appeal against his dismissal failed to have the time limit extended and his claim was struck out.

The employee was legally represented and his legal advisors should have known that the three month time limit begins to run from the effective date of termination of the employee's employment and filed the claim in time.

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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