

Employment Club Update

March 2010



'Fit Notes' To Replace 'Sick Notes' From 6th April

The Department for Work and Pensions has published its consultation response on 'fit notes' which are intended to be introduced on 6th April and save the taxpayer £240 million over 10 years.

The fit note will list common changes that employers could make to the working environment to facilitate an employee's return and GP's will be able to make their own alternative suggestions on the form.

The fit note enables a GP to advise an employee "you may be fit for work taking account of the following advice". However, it will be the responsibility of employer and employee as to whether changes can be made to safely enable the employee's return to work.

Fit notes will also only last for an initial maximum period of 3 months and not 6 months as previously and the Government aims to produce further guidance for healthcare professionals, individuals and employers prior to implementation of the new rules.

According to Lord McKenzie, Secretary of State for the DWP "The fit note will reduce the costs that employers often have to bear when people are off sick for a long time. We know work is good for people's health. With the right support in place, employers and doctors can work with employees to help them get back to work sooner."

Asda Contract Harmonisation

Asda has been allowed to lawfully harmonise the contracts of employment of 18000 of its staff after 8700 staff refused to transfer onto a new contract and some issued proceedings claiming unauthorised deductions from wages.

The Employment Appeal Tribunal held that Asda had a contractual right to vary pay terms and conditions even though it was set out in Asda's general terms and conditions and not in Employee's contracts. The EAT held that the variation clause was sufficiently precise and would have been clear to the parties at the outset if they had applied their minds to the potential variation. The decision is good news for employees hoping to rely on contract variation clauses.

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.

M.O.D. Harassment Claim

A female soldier who was told that an administrative error meant that she had no job, that she had to re-pay one months salary, who was issued with an inappropriate final warning, was subjected to pornographic material in the workplace and was then discharged whilst on sick leave with stress has been found to have been harassed under the provisions of the Protection from Harassment Act 1997.

The High Court found that there was fault on both sides and the employee was difficult and challenging. However, a superior officer has unlawfully capitalised on an administrative error to remove the soldier. A related claim by the soldier in negligence failed.

New 'Whistleblowing' Regulations

The Government has produced new regulations to allow Employees to consent the reporting of environmental offences, health and safety offences and other alleged illegal acts of employers to prescribed regulators if they are raised in employment proceedings.

The Employment Tribunal claim form is to be amended to provide a simple tick box enabling employees to give their consent. Employees bringing claims often claim that their employer has acted illegally and employers will now have to be extra vigilant in ensuring that they comply with the law.

Ruling on Wearing a Visible Cross

The Court of Appeal has ruled that a devout practising Christian working for British Airways had not been discriminated against when she was suspended for wearing a visible cross as an expression of her Christian belief.

The Court found no religious requirement that Christians wear visible crosses. The Court also indicated that employers do not have to allow breaches of dress codes in relation to 'parochial' and 'factitious' employee beliefs. However, employers should take advice on a case by case basis as individual matters are often sensitive to their specific facts.

Sick Leave / Holiday Ruling

A Tribunal has decided that the Working Time Regulations should be interpreted in line with European Law and that employees should be entitled to reclaim holiday leave if they are sick whilst on holiday. The recent European case of Pereda had already decided this in relation to the public sector and this case extends the ruling to the private sector.

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