

Employment Club Update

May 2010



Equality Act 2010 Becomes Law

The Equality Act 2010 will now enter the statute book after years of discussion and amendment although many provisions do not come into effect until October this year or later.

The Act makes numerous technical changes to the discrimination legislation that has developed in a piecemeal fashion since the 1970's. However, there are a number of new provisions.

Employers will be barred from asking questions during the recruitment process related to an employee's health (subject to certain exceptions). The Act also allows positive discrimination in favour of underrepresented groups in limited circumstances (although the Conservatives have indicated that they will not bring this part into force if they are elected).

The Act will also prohibit employers taking action against employees for disclosing their pay details.

However, probably the most fundamental change is the ban on age discrimination in the supply of goods and services. This may have a substantial impact on all businesses but particularly those who market their products or services to specific age groups at present.

Volcanic Ash—Rights of Stranded Employees

Do you have employees stranded abroad as a result of the ash cloud from the Icelandic volcano?

Whether they should be paid for the unexpected time away will depend on their contract and relevant employment policies. However, employees should generally be paid if they were stranded whilst away on business.

Otherwise, there is no general right to pay if they do not attend work. However, the TUC has suggested that employers be lenient with stranded employees.

Consider paying staff in full or in part, allow them to take additional holiday to cover the unplanned absence or allow them to bring forward holiday from next year if they have no remaining leave.

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.

Service Provision Ruling

A law firm, Ward Hadaway provided services to the Nursing and Midwifery Council ("NMC"). However, the contract was taken over by another firm, Capsticks.

Two employees sought a declaration that this was a transfer of a services provision and that their contracts should have transferred to Capsticks.

It was held, on the facts, that there was no service provision change. No work in progress was transferred to Capsticks. Also the nature of the new contract was different in that the NMC dealt with much of the preparatory work and advocacy 'in house'.

The case provides a welcome insight as to how Tribunals will deal with these difficult cases although they will often turn on their facts.

Climate Change Settlement

An employee who was allegedly discriminated against on grounds of his environmental views has settled the case with his former employer out of court for £42,200 and costs of £12,800.

The settlement was without admission of liability but followed a ruling of an employment judge that a belief in climate change was akin to a religious belief.

The settlement enabled the employer to avoid an even more costly 10 day trial of the issues.

Timing of Grievance and Discipline

The Employment Appeal Tribunal has held that an employer who dismissed two managers before it had heard their grievance had not acted unfairly.

The EAT held that it would only be in the rarest of cases that an employer would be obliged to hear a grievance before dismissing an employee and probably only in cases where there was "...some clear evidence of unfairness or uncompensatable prejudice.

The employer had not acted outside the range of reasonable responses open to it on this occasion.

Employee Sentenced for Contempt

An investment manager who engaged in personal account trading in breach of company rules and Financial Services Authority requirements was sentenced to three months imprisonment (suspended for 18 months) for 6 incidents of contempt of Court.

Amongst other matters, he committed perjury when swearing affidavits and attempted to destroy evidence in the course of the proceedings.

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