

Employment Club Update



November 2009

Female Soldier Discriminated Against by Ministry of Defence

A female soldier from St Vincent with childcare commitments was discriminated against by the MOD when it insisted:- 1) that she be available for deployment 24/7; and 2) when it refused her extended family (non-British nationals) to stay with her in services family accommodation to assist her in her childcare requirements.

The Employment Appeal Tribunal held that women with children were disadvantaged by the 24/7 deployment policy and therefore discriminated against on grounds of gender.

In relation to the service accommodation policy, the EAT held that the policy disadvantaged female soldiers from St Vincent as they would be less likely to have relatives with a right to reside in the UK whom they may wish to rely upon for childcare purposes.

The EAT held that relaxation of either policy would have overcome the discriminatory effect of the policies combined. It also denied the MOD's purported defence that the policies were justifiable for reasons of combat effectiveness in that measures could be put in place to remove the discriminatory effect of the combined policies.

The MOD also lost its argument that the soldier's family would effectively avoid immigration rules (the MOD claiming to be bound by Home Office rules) if soldier's relatives were allowed to live in service accommodation.

NHS Data Protection Breach

Mid Staffordshire NHS Foundation Trust has been found to be in breach of the Data Protection Act 1998 after an employee in the Human Resource team downloaded sensitive and unencrypted personal information about a fellow employee to a home computer which was not password protected.

The Information Commissioners Office held that this was a breach of the seventh data protection principle which states :- "Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data."

DWP Research on Race Bias

Research by the Department for Work and Pensions has found that 68% of job applications with names indicating a White British ethnic origin were successful compared to 39% of 'ethnic minority' applications.

The research randomly assigned names to application forms to remove any bias in the quality of applications.

Discrimination in the private sector was much higher than in the public sector. However, where applicants completed application forms (as opposed to submitting CV's) 'ethnic minority' applications were only 1% behind.

Third Party Dismissal 'Fair'

A bus driver who was dismissed by Connect (South Tyneside) ("Connect") following a demand from Tyneside Metropolitan Borough Council ("Tyneside"), was not unfairly dismissed.

Connect had a contract with Tyneside to drive disabled children to school. A term of the contract allowed Tyneside to veto the employment of individuals recruited to provide the service for any reason.

The driver was investigated for allegations of sexual abuse in 2004 although the matter was never pursued by the police. Whilst Connect objected to Tyneside's veto, it had no other work for the employer who was thereby dismissed.

TUPE and Insolvency

The Court of Appeal has held that a contract of employment will be treated as continuous where an employee of a Company in administration transfers to a buyer of the business from the administrator in a pre-packaged sale.

There is a possible way around this ruling but it will be of no benefit to buyers who have already taken on the employees. Early advice is therefore essential.

Service Linked Pay Unlawful

The Court of Appeal has ruled that a Health and Safety Executive service related pay scheme that linked pay to length of service for up to 10 years was discriminatory on grounds of gender.

The Court found that the female employees were effectively prevented from achieving the same salary as comparable male colleagues due to the increased likelihood of women taking time out to have families.

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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