

Employment Club Update

October 2009



New Developments in Age Discrimination

In a landmark judgement, the High Court has confirmed that employers can retire employees at 65 and, for the time being at least, the default retirement age (DRA) will remain at 65.

The Equality and Human Rights Commission had argued that 70 should be the earliest DRA. The Court accepted the government's arguments in the short term but agreed that there were powerful reasons why a DRA over 65 should be imposed and only agreed because the government has agreed to review the DRA in early 2010.

The ruling is good news to employers, in the short term at least, but extremely disappointing for all those employees whose claims were 'on hold' pending the outcome of this long awaited decision.

In an entirely separate case the Employment Appeal Tribunal has ruled against Tower Hamlets London Borough Council after it dismissed an employee of 30 years service six and a half months before he would have been entitled to claim early retirement benefits.

The EAT allowed the employees claim for unfair dismissal and age discrimination on the basis that the Council would not have treated an employee not nearing the early retirement age in the same way and the Council was improperly motivated by the financial cost of funding the employee's pension provision.

Workers Can Defer Sick Leave If Ill on Holiday

In a judgement that will be of concern to many employers, the European Court of Justice has decided that those employees who become ill whilst taking their holiday entitlement under the Working Time Directive will be entitled to instead treat that holiday entitlement as sick leave and defer such holiday entitlement to a later date.

The ruling technically only applies to employees in the public sector at present although private sector employees will benefit in the same way if the UK Working Time Regulations are amended to comply with this latest European ruling as anticipated.

Cost Awards Against Lying Litigants!

An employee has had costs awarded against her for lying about breaching a confidentiality clause in a compromise agreement. Overturning the decision of the original tribunal, the EAT held that the employee knew that what she asserted was false and the proceedings could not be considered as 'necessary' as originally held.

This is good news for employers and sends a stark warning to potentially dishonest employees hoping to capitalise from spurious claims.

Tribunal Service Claim Statistics

The Employment Tribunal and Employment Appeal Tribunal statistics for 2008/2009 have now been published. Although claims are up 20%, if claims by airline cabin crews are excluded, there was actually a 4% reduction.

Unsurprisingly, unfair dismissal, redundancy and breach of contract claims were up but these were offset by reductions in claims in other areas.

Other highlights included news that 21 age discrimination claims were disposed of with average compensation payments of £8000 and news of a large race discrimination compensation settlement for £1,353,432.

Guide to Employing Children

The Department for Children Schools and Family has published an excellent guide for all those employing or considering employing children and it is available free online.

It contains information on such matters as the types of work that children are allowed to do, maximum working hours / rest breaks and the health, safety and welfare requirements that must be complied with.

Injury to Feelings Awards Rise

Injury to Feelings awards in discrimination cases are set to increase. Whilst they are technically unlimited the following guidelines for compensation should now generally be followed by tribunals:-

1. Less serious cases, up to £6000
2. Serious cases which do not merit an award in the highest band, £6000-£18,000
3. Most serious cases, up to £30,000

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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