

Employment Law Update

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Welcome

So the end of another year and the first decade of a new century is drawing to a close. This year has seen the implementation of the long awaited Equality Act 2010 a mammoth piece of legislation designed to simplify discrimination legislation or cure insomnia, for those of you who have ever sat and read it end to end. So to business, useful information for this month includes the updates on compensation payments in unfair dismissal claims, new rates of maternity pay and a quick look at the minimum wage.

Increase in Compensation Limits

From 1st February 2011 there will be a change in the maximum compensatory award for unfair dismissal purposes. The increase moves from the current cap of £65,300 to £68,400. A weeks pay for the purpose of calculating the maximum basic award increases from £380 to £400 per week. This means the maximum ward in an unfair dismissal claim is £80,400. The weekly pay calculation would also be relevant to statutory redundancy calculations.

Proposed Payment Increases

The latest proposals for increases in the rate of Statutory Maternity, Paternity and Adoption Pay, as well as the rate of Maternity Allowance have just been released by the Department for Works and Pension. The new rate, if approved will increase from £124.88 to £128.73 per week for qualifying employees.

The rate of Statutory Sick Pay is also due for an increase with the proposal being a rise from £79.15 per week to £81.60 per week.

Guarantee payments are also set to rise from the current £21.20 per day to £22.20 per day.

If approved the figures are expected to come into force on 11 April 2011.

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Reading Aloud

Guidance has been handed down by the EAT in relation to the reading aloud of witness statements in Tribunal. President of the EAT Mr Underhill states:

- Often reading aloud a witness statement achieves nothing of value and wastes time in the Tribunal.
- Reading sections of a statement may be useful if it requires further clarification or the examples in the passage are technical or have been drafted by an unrepresented party and require additional explanation.

Commonsense

The EU Parliaments proposal to extend paid maternity leave to 20 weeks has been roundly rejected by the EU Council of Ministers. Without the support of the Council the proposal is unlikely to become law.

The British Government had strongly objected to the proposal, with the Minister for European Relations Edward Davey stating “The UK and other countries have today made clear that EU rules on maternity rights should not be reformed in a costly and

Christmas Shoplifting

Apparently a recent survey has revealed that employees across Europe will steal several million Euros worth of goods over the Christmas period. An example of this type of theft from the employer came to light following the criminal case of an IT specialist employed by Sainsbury’s. The lead analyst programmer created bogus Nectar card accounts and then loaded them up with points which if

- If both parties are represented the lawyer should normally be able to agree the statements and take them as read, although ultimately this is a matter for the Tribunal themselves.
- He also suggests that where reading aloud is standard practice, consideration should be given to whether this remains desirable.

Certainly in the Hull Tribunal it is standard practice currently for the witness to read aloud their statement. Whether this continues remains to be seen, but may take some of the pressure of those witnesses who find the practice difficult and will certainly make Tribunals less time consuming.

regressive way. The changes proposed by MEPs would restrict a Member State’s ability to deliver a system that works in the best interests of parents.”

One might also pertinently add, “and in the best interests of women of child-bearing age.” It cannot be desirable for business to view women or parents as a financial burden. For small business particularly this law may have caused significant concern about the future cost of maternity rights. In the current economic climate this has to be a commonsense outcome.

cased would have resulted in a total fund of £73,207. Or to put it another way, if the points has been gained legitimately £7 million pounds worth of groceries.

Clearly, those in the retail industry need to be vigilant and have adequate processes in place to prevent thefts from staff and ensure any culprits can be caught.

Minimum Wage

Payments for on-call time have resulted in numerous cases going to Tribunal, with questions being raised about whether employees should be paid for time spent “on-call.”

In the current case, housekeepers employed by the South Manchester Abbeyfield Society were required to spend time on call, during which time they were provided with private accommodation. The housekeepers were also allowed to sleep during this time. The EAT overturning the decision of the original Tribunal found that the housekeepers could only claim pay for the hours they were awake for the purpose of working. In other words they could not claim hours for sleeping.

As a side note the EAT pointed out that additional claims may have existed for compensation for breach of rest breaks and breaching the maximum working week, but these were out of time.

The case has been sent back to another Employment Tribunal to determine how long the housekeepers spent awake in order to decide the payments due under the national minimum wage.



Grand Scale Whistleblowing

WikiLeaks has dominated the headlines and made whistleblowing the talk of the town. Not usually a topic that can cause such national and international interest, but with such explosive revelations this was no ordinary disclosure.

As those involved face potential charges, it raises the question of what protection is available for employees who blow the whistle.

The law is not new, coming into force in 1998 under the Public Interest Disclosure Act. The law gave employee and in some cases workers protection when making a disclosure.

Broadly neither an employer nor a worker can suffer a detriment as a consequence of making a qualifying public interest disclosure and employees cannot be unfairly dismissed for making a disclosure.

This begs the question what would qualify as a disclosure? The law covers a number of possible disclosures:

- that a criminal offence has been committed, is being committed or is likely to be committed,
- that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
- that a miscarriage of justice has occurred, is occurring or is likely to occur,

- that the health or safety of any individual has been, is being or is likely to be endangered,
- that the environment has been, is being or is likely to be damaged, or
- that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

Any employee or worker who feels that one of the following may apply to them, must actually communicate the information and it cannot be a bland statement of the environment is being damaged. It must be a disclosure that the person actually believes and believes honestly, or as the Act puts it a belief held with good faith.

If later the employee or worker turns out to be wrong that will not be held against them as long as the belief was honestly held and the report made in good faith. In other words the Act and the disclosure should not be used to deliberately get someone else into trouble or to get even on an old grievance.

Once made in the correct way to the correct person or organisation, the employee or worker should not suffer any detriment. Unfortunately the term detriment is not defined, but could include not being promoted or receiving less or no bonus when other do. It should also not affect the working relationship,



so a person should not be victimised because they have made a disclosure.

For employees, there is a further right, that not to be unfairly dismissed as a consequence of making a qualifying disclosure. So even if something potentially damaging to the business has been disclosed, the whistleblower should not be dismissed as a consequence.

Of course, resorting to the Tribunal or Courts is not automatic. The individual concerned would have to prove that their detrimental treatment or dismissal was linked sufficiently to the disclosure made in order to bring a successful claim.

With all the publicity, claims of this nature may become more "fashionable", employers therefore need to be on their guard against spurious reports, but equally mindful of their obligations when a qualifying disclosure is made. Remain open-minded and take advice.



And Finally....

Another year over, the end of another newsletter, as such we would just like to take this opportunity to wish you all a very Merry Christmas and A Happy and Prosperous New Year. Until 2011, bye for now.

With Best Wishes

Lynsey and Ed

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A Christmas Carol – Just not the Dickens version!

A legal secretary who had applied for and been granted a period of unpaid leave so that she could go on a third world mercy dash, helping the poor has been awarded compensation by an Employment Tribunal.

Ms Redmond had requested the leave so that she could help the poor and was then told upon her return that she could not go back to her old job for 5 months. She has been awarded £6,099.57 for unfair dismissal. A heart-warming end for her good deed, which has no ghosts or anything to do with Christmas, but her actions were undeniably full of festive spirit.

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