

Employment Law Update

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In Brief

Council apologies over discriminatory advert

Northamptonshire County Council apologised after it issued an advert for a 'female, white and non-Muslim' taxi driver to take a disabled child to school. It is understood that the advert was designed to meet the parent's stipulations. The Council said 'we apologise unreservedly for this error of judgment which resulted from trying to address the specific needs of an individual child.'

Equality Act Deferment?

There is speculation that the proposed October 2010 implementation date for major parts of the Equality Act 2010 may be postponed following the removal of references to this date on the Government Equalities Office website. We shall keep you posted as matters progress. Watch this space - will the Equality Act 2010 ever come into force?

Welcome

Welcome to the June addition of our employment newsletter. June has been a very eventful month, England's football have had two unmemorable weeks, they now have a manager who will not quit his position perhaps because he can see a large figure heading his way under the terms of his contract of employment! (A contract I'm sure we would all wish we had signed!) The new coalition government has introduced an emergency budget allegedly as a direct result of the worst set of public finances ever seen by an incoming chancellor. It hasn't all been bad however, we have experienced some glorious weather, and lets hope it lasts longer than the duration of England's world cup!

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Clarification on the effective date of termination

Those of you who have defended employment proceedings issued following the termination of an employee's contract may be familiar with the meaning of the 'effective date of termination' (EDT). It is the date on which the employee's contract was terminated. In Tribunal proceedings it is important that the date is established because in normal circumstances a Tribunal will not have the jurisdiction to hear a complaint, based on the termination of an individual's employment, if it is issued 3 months or more after the EDT.

The crux of the issue in front of the Employment Appeal Tribunal in the case of *Heaven v Whitbread* was the date Mr Heaven's employment contract was terminated following his resignation. On 29th September Mr Heaven wrote a 'conditional resignation letter' stating that he would resign forthwith but that the resignation was 'dependant on two factors' which were receiving 1 months salary and a 'glowing reference'. His employers emailed back stating that they would not accept a conditional resignation. Mr Heaven responded via email on 3rd September confirming that he was resigning 'with effect from 29th August'. On 4th September the company accepted his resignation.

Mr Haven then issued an ET1 at the Tribunal claiming constructive dismissal and detailing that his EDT was 29th September. This date was clearly wrong however, whether it

was 29th August or 3rd September would dictate whether the Tribunal had jurisdiction to hear the claim because of the three-month time limit for issuing the claim.

An Employment Judge ruled that the EDT was 29th August and as a result the Tribunal did not have jurisdiction to hear the claim. Mr Heaven appealed to the EAT and HHJ Pugsley ruled that the Judge's decision was fundamentally flawed because he did not have regard to a previous Court of Appeal decision. He held that the letter of 29th August was not an 'unequivocal resignation'. He stated 'the effective date of termination of employment is a statutory construct. It depends on what has happened between the parties and not on what they may agree to treat as having happened.' He continued'you either resign or you negotiate the terms on which you will resign, but there is a fundamental distinction between those two propositionswhat brought the contract to an end was [Mr Heaven's] email, saying that he intended to resign and did resign.'

As a result the ET1 was presented within the time limit and the case was allowed to proceed.

This case highlights the importance of confirming an employee's intention to resign. The resignation must be unambiguous and, particularly if given in the heat of the moment, should be confirmed with the employee, preferably in writing.



Attempted attack on Employment Judge halted by barrister

An unsuccessful claimant attempted to attack an Employment Judge with a meat cleaver at Reading Employment Tribunal. Two years earlier the man had lost his job at Slough Library and was subsequently unsuccessful in his recourse to the Tribunal. Andrew Burns, a barrister present at the Tribunal during the attempted attack said that the man walked into the room calmly said something to the Judge and raised the cleaver above his head. The Judge tried to protect himself with his arms, Mr Burns quickly went up to the man and asked him to hand over the weapon and the man complied. The incident exposes the lack of security in Employment Tribunals in comparison to other courts, there are no metal detectors present, bag checkers or security staff. A stark warning which follows incidents of attacks by Respondents on Claimants and vice versa. Of course as a 'free' service the question is where will the funds come from to provide security in the Tribunal for all our safety?



Council's positive discrimination is legal

Bristol City Council faced harsh criticism when they banned white people from applying for an £18,000.00 a year traineeship. The training posts were for graduates and did not guarantee a job after the post ends.

The council decided that it wanted to increase its employment of ethnic minority workers because its current workforce consisted of only 7% of workers from ethnic minorities when 12% of Bristol's population come from minority backgrounds.

The Race Relations Act 1976 allows employers, in limited circumstances, to take action to encourage candidates from a particular group to apply for positions within their organisation. One circumstance

arises when the proportion of that group among those doing that work at that establishment is comparatively small.

As those of you who attended our seminar in April will be aware, the Equality Act 2010 is aimed at giving employers more scope to take positive action. Under Section 158 of the Act employers will be able to favour underrepresented groups during the recruitment process provided that the candidates are of equal suitability.

In today's economic environment positive discrimination is likely to evoke heated debate. It will be interesting to see how matters develop if Section 158 of the Equality Act becomes Law.

Fit note not fit for purpose?

JDDoctors have expressed concerns in relation to the doctor's fit note introduced in April 2010. GP's are concerned that they are being asked to put information on the form regarding adjustments in a patient's workplace when they do not have an understanding of the office environment.

Failure to comply with a doctor's recommendations could have implications in disability discrimination

cases brought against employers. For the avoidance of doubt employers should always use their best endeavours to attempt to implement the suggested changes, particularly if they suspect that the employee may be a disabled person. As always, if you have any questions on this complex subject please ask.

Emergency Budget

On the 22nd of June the chancellor George Osborne announced the coalition government's emergency budget. Some of the provisions directly related to business are as follows:

- The main rate of corporation tax is to be reduced from 28% to 24% over the course of four financial years from April 2011. There will also be a reduction in the main and special rates of capital allowances from April 2012.
- A reduction on the small profits rate from 21% to 20% from April 2011.
- A National Insurance Holiday for new business that start up in certain UK areas over the next three years.
- An increase in the Enterprise Guarantee and the creation of a new Enterprise Capital Fund.

Lets hope these measures achieve the aims of supporting business and encouraging growth with innovative investment.





Employment claim issued against Simon Cowell

It has been reported that Emma Amelia Pearl Czikai, a contestant on Britain's got talent has issued a 'discrimination' claim against the show's creator Simon Cowell, his production company Syco and Freemantle media.

Ms Czitai suffers from cervical spine neuritis, which can cause severe neck and back pains as well as headaches. She claims that producers knew about her condition, but discriminated against her and made a 'fool' out of her and the conditions 'were unfair.' There has been a pre-hearing review scheduled for July 2010.

And Finally....

We hope that you have found this month's newsletter informative. We wish you all the best for next month and hope that our next newsletter is received during a prosperous and pleasant July summers day.

Lynsey and Ed

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'Sex taunt' cop receives huge payout

Ex-policewoman Barbara Lynford won her sex discrimination case against Sussex police in December 2007 at the Brighton Employment Tribunal. WPC Lynford was called a 'daisy', a 'whoopsy' and a 'lipstick' by male officers, who also displayed pictures of topless women in the station. She had two years off sick as a result. She has now been awarded £275,000.00 damages following a remedies hearing.

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