

Employment Law Update

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by Lysney Howes & Ed Heppel



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In Brief

Appeal Tribunal interprets DDA 1995 to cover carer of a disabled person.

In the case of *EBR Attridge Law (1) Law (2) v Coleman*, the Employment Appeal Tribunal inserted new words into the Disability Discrimination Act 1995 in order to interpret it so as to make it unlawful for an employer to discriminate against an employee who is a carer of a disabled person by reason of that person's disability.

NHS Manager receives massive payout for age discrimination

NHS manager Linda Sturdy was previously awarded £29,500.00 for injury to feelings and £5,000.00 aggravated damages for the age discrimination and victimisation she suffered while working for the Leeds Teaching Hospitals NHS Trust. Mrs Sturdy has now been awarded a further £147,000.00 compensation for her loss of income and pension, injury to feelings and aggravated damages.

Welcome

Another month has flown past and the longest day of the year is approaching! We finally have a new government that no one voted for and with it new employment law proposals, which we update you on in this month's edition of our employment newsletter.

The Football World Cup is due to start this month and it will come hand in hand with increased self-certified sick days. Specifically Wednesday 23rd of June and England's afternoon fixture against Slovenia is one to look out for! Hopefully it will not be just detrimental for employers however; a successful tournament usually increases interested parties' general well-being and with any luck productivity!

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Judiciary protects Law encouraging settlement

The general without prejudice rule is that *'letters, written and oral communication made during a dispute between parties, which are written or made for the purpose of settling the dispute, and which are expressed or otherwise proved to be 'without prejudice', cannot generally be admitted in evidence.'*

Those of you who are unfortunate enough to be familiar with Tribunal proceedings will know of the role of ACAS as the independent conciliator. Talks regarding settlement are often conducted through ACAS and the talks will be on a 'without prejudice' basis. Compromise agreements are also marked 'without prejudice' until they are executed by both parties. If therefore the talks break down or the compromise agreement isn't signed, the parties cannot refer in Tribunal to the content of the communication as it is without prejudice. In a nutshell the rule encourages settlement.

The main exception to the rule is where *'the exclusion of what was communicated in without prejudice negotiations would act as a cloak for perjury, blackmail or other unambiguous impropriety.'*

In this recent case Mrs Woodward tried to introduce evidence of without prejudice negotiations that occurred with Santander in 1996 (then Abbey National). HHJ Richardson found that *'the policy underlying the rule is that parties should not be discouraged from settling their disputes by fear that something said in the course of negotiations may be used to their prejudice in subsequent proceedings.'*

With regard to the main exception to the rule he found that the 'impropriety' alleged in the without prejudice communications must be unambiguous - only in the clearest case can there be an exception and this case did not fit the exception.

It seems therefore that the Judiciary are keen to protect the rule as they are conscience of its assistance in settling matters thus avoiding expensive litigation.



Solicitors Role in compromise agreement clarified

It is a statutory requirement in most employment related disputes that, to conclude a valid and effective out of court settlement by way of a 'compromise agreement' an employee must have had independent legal advice. Employers are often concerned by this requirement as it involves asking the employee to present the compromise agreement and often his/her case to a solicitor.

In this case, heard by the Employment Tribunal in Glasgow, Employment Judge Walker (Vice-president of the Scottish Employment Tribunals) ruled that under Section 77(4A) of the Sex Discrimination Act 1975 all that is required is that *"the individual is advised what the terms of the compromise agreement are and what they mean"*. Accordingly it is not necessary for the solicitors to advise the individuals on whether it was a 'good deal' for them.





BA strike back on after court overturns injunction

The interim injunction obtained by BA to prevent cabin crew going on strike has been overturned by the Court of Appeal by a majority of 2 to 1. The Court held that by posting full ballot results on its website, on notice boards at Heathrow and Gatwick airports and in a newsletter, Unite had complied with its duties as set out in *Section 231 TULR(C)A 1992*.

Following the decision Tony Woodley, Unite general secretary said “ *BA must now accept that negotiation not litigation is the only way to secure the settlement we all want. However, further strikes will be unavoidable if the company does not immediately work with us to address the outstanding issues.* ”

Queen’s Speech

This year’s Queen’s speech was silent on specific employment related measures however proposals relating to the employment field included:

- National Insurance Contributions Bill - to reverse those aspects of the Labour government’s planned increase in National Insurance Contributions which affect employer National Insurance Contributions.
- Armed Forces Bill - Encouraging recruitment into professions, maximising leave

BA staff went on strike on Monday following BA’s refusal of Unite’s offer to call off the strike if BA reinstated the travel perks that had been taken away from staff involved in a previous strike. Unite said by refusing their offer, BA were attempting to undermine Unite’s authority. This is a very public lesson of how expensive it can be to stick by your principles during negotiation. On a short-term basis reinstating travel perks would cost BA a fraction of the losses they will sustain from a five-day strike. However BA may be looking to avoid further strikes in the long term. Don’t expect any budget BA flights to the Caribbean in the near future!

periods and helping children of service personnel.

- Postal Services Bill - injection of new capital into Royal Mail, guarantee that the post office network remains in public hands and seek to improve staff relations with management. (We should all take note of how that one works!)
- Welfare Reform Bill - to provide for reassessing of Incapacity Benefit claimants for “readiness to work”, with the threat of being moved to Jobseeker’s allowance.

EX-Teacher & BNP activist cleared of intolerance

Adam Walker resigned from his post as a technology teacher at the Houghton Kesper Sports College after the head teacher asked IT staff to investigate his use of the internet. Mr Walker had posted comments on the internet describing some immigrants as “savage animals” and “filth”.

Mr Walker appeared in front of the General Teaching Council (GTC) committee accused of racial intolerance and unacceptable professional conduct. The GTC found Mr Walker guilty of a single charge of misconduct regarding his personal use of a laptop during lessons but cleared him of racial intolerance. The panel’s chairwoman said “the committee does not accept that references to ‘immigrants’ are of themselves suggestive of any particular views on race”.

The panel’s decision begs the question; would he have been dismissed if he didn’t resign? It was alleged that he had spent over 8 hours on the laptop for purposes not connected to school duties which, if not allowed to do so, clearly is an abuse of company property. His employer may have also argued, if necessary, that his comments brought the school into disrepute.





Social worker in Baby P case to tribunal proceedings

Social workers Gillie Christou and Maria Ward were fired for gross misconduct following the death of Baby P and their licenses were suspended by the General Social Care Council (GSCC) pending a conduct hearing.

Ms Christou is accused of failure to keep records of supervision meetings up to date, failure to document evidence for a risk management plan and failure to ensure a child protection plan was followed and Ms Ward is accused of failure to follow a child protection plan and keep records of visits up to date.

Queen's Speech (continued)

In addition to the above the Coalition Government Agreement contained the following employment law points:

- Limitation of the application of the EU Working Time Directive in the UK.
- Abolition of ID cards.
- Default retirement age to be phased out.
- Review to establish when the state pension will rise to 66.
- Rise in income tax allowances for lowest paid from April 2011.
- Clamp down on 'unacceptable' bankers bonuses.

Cap on immigration from outside the European Union.

And Finally....

We hope that you have enjoyed this month's edition of the newsletter as much as you will enjoy this bank holiday weekend and hopefully the warm weather that accompanies it. Until next time

Lynsey and Ed

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