

Employment Law Update

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this issue

- Pay Reduction Warning - page 2
- First Government limit for non-EU workers - page 2
- Colourful witness statement read to tribunal - page 3
- First data protection fines issued - page 3
- Teacher who lost her voice awarded compensation - page 3
- location of tribunal - page 3
- Sacked accountant pursues appeal - page 4
- Serial litigants liable to face costs - page 4
- And finally...- page 4

Royal Wedding to be a Bank Holiday

The Prime Minister has announced that the date of the Royal Wedding, the 29th April 2011, will be a public holiday to mark a “national day of celebration”. One result of this announcement is that there will be four bank holidays in 11 calendar days next April and May.

Generally speaking Employers will not be forced to give their employees this additional day, but you should check your contracts and the wording surrounding bank holidays to make sure you haven't inadvertently contracted to allow all bank holidays.

Welcome

Welcome to November's edition of our employment newsletter. It is not even Christmas and Ireland has already been guaranteed a present, 85 billion Euros (well perhaps not if it was just to clear debt). Of course the problems don't end with Ireland, as the Iberian economies look distinctly shaky, could 2011 be another difficult year? Lets hope not. There has been some positive news this month with the announcement of the Royal wedding and the confirmation of the associated bank holiday, more information in the newsletter.

High profile Unfair Dismissal

Former Chelsea assistant coach Ray Wilkins is contemplating legal action against the club following the termination of his employment earlier this month. Wilkins stated *“the League Managers Association legal advisors are assisting me in obtaining answers to a number of questions arising from my undoubtedly unfair dismissal, and all efforts are being made to reach an amicable solution.”*

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Pay Reduction Warning

The economic climate in recent years has forced many employers to focus on reducing their expenditure on staff wages. Redundancy cannot be avoided in certain situations, however there are other options available for example; reducing hours of work or the employee's wage/ salary. Both of these options would result in a change in the employee's contractual terms and, in most cases, would amount to a fundamental breach of contract if imposed without the employee's consent.

With regard to a reduction in pay, the employee may agree if the alternative is redundancy. If agreement is obtained the contractual change should be confirmed in writing and signed as accepted by the employee. What happens if the employee doesn't agree? If the employer reduces the employee's wage without their consent, the employee has the option of resigning and claiming constructive unfair dismissal. In a successful claim for constructive unfair dismissal employees can be awarded an amount for loss of net wages, however Claimant's are required to mitigate their loss by seeking alternative employment. Tribunals have the power to reduce a Claimant's award if it is satisfied that the Claimant has not properly mitigated their loss.

If therefore, an employer reduced an employee's wage by 10% and the employee left his employment with the company as a result and brought a claim for constructive unfair dismissal and was seeking compensation for a resulting six months unemployment, the employer would have the argument that the employee had failed to properly mitigate his loss because he did not accept a job on the same terms as the job he resigned from save for 10% less by way of remuneration and the employee's compensation should therefore be reduced accordingly.

The decision of the Employment Appeal Tribunal in the recent case of Mr Banks and Blowich Fencing has warned that employers should not expect a reduction in compensation in all such cases. The EAT found that the relations between the parties had deteriorated to such an extent that it was not open to the original Tribunal to conclude that it was reasonable to expect Mr Banks to go back and work for them.

Employers should not be heavy handed and adopt a 'like it or lump it' attitude with regard to changing an employee's contractual terms. Evidence of an open, fair and meaningful consultation between employer and employee when fundamental changes to contract of employment are contemplated and later unilaterally made, will assist a Tribunal in deciding to what extent relationships have deteriorated and whether compensation should be altered accordingly following any successful claim for Unfair Dismissal.



First Government limit for non-European workers

The government has now set a limit on the number of skilled non-european workers that businesses can bring to the UK, as from April 2011. It has pledged the following:

- A new annual limit of 21,700 for those coming into the UK under the skilled and highly skilled routes. 20,700 under Tier 2 (General) and 1,000 under the new 'exceptional talent' route.
- An increase in the minimum salary to £40,000.00 per annum for Tier 2 (Intra Company Transfer) route workers if they are to stay for more than 12 months.
- To limit Tier 1 to entrepreneurs, investors and the exceptionally talented; and
- To require occupations in Tier 2 (General) to be at graduate level.

First Data Protection fines issued

The Information Commissioners Office (ICO) has issued its first fines for breaches of the Data Protection Act. Hertfordshire County Council received a fine of £100,000.00 and Sheffield based A4e, a company who provide information on employment and setting up a business, were fined £60,000.00

Both incidents involved breaches of the Data Protection Act that could have caused 'substantial harm' to certain individuals and accordingly the ICO determined that the offences justified monetary penalties. The ICO

stated *"These first monetary penalties send a strong message to all organisations handling personal information - get it wrong and you do substantial harm to individuals and the reputation of your business. You could be fined up to £500,000.00."*

The fines send a strong message to employers who handle sensitive data. Employers can minimise the risk by ensuring that they have comprehensive Data Protection Act policies and procedures in place.

Teacher who lost her voice awarded compensation

Hillington Council employed Joyce Walters as a teacher. She suffered permanent damage to her vocal chord nodes after raising her voice in class she said, *"As a result of the noise and disruption I often had to repeat myself and raise my voice very significantly whilst teaching."* She made requests to her employer to be moved to a less vocally demanding role that were ignored.

Mrs Walters lodged a disability discrimination claim in the Employment Tribunal on the grounds that her employer failed to make any reasonable adjustments to her role to prevent damage to her voice. She also issued a personal injury claim. Both claims have been settled out of court, the employment claim for £10,000.00 and the personal injury claim for £145,000.00.

Location of Tribunal

The EAT has held in the case of *Faleye v UKME* that there is no right for a Claimant in the Employment Tribunal to have his or her case managed in the Tribunal region which covers or covered his or her place of work. Transfers can be granted for whatever reason seems good to the Regional Employment Judges, subject only to the question of the transfer giving rise to injustice.

Injustice can arise where the Tribunal office is some distance from one or more of the parties. The above case concerned a transfer from London South to the Central London Employment Tribunal and the Judge was entitled to take into account the special expertise of the London Central tribunal in state immunity, which was relevant to the matter in hand.

Colourful witness statement read to tribunal

Gillian Martin, a former employee of GMB Union, claims that she was forced out of her job due to sexual discrimination. A section of her witness statement read as follows:

I draw an analogy of my situation with the movie Lord of the Rings in the inferences which I invite the tribunal to make in relation to this case....For this purpose, I am suggesting that Paul Kenny [GMB general secretary] is the Dark Lord Sauron the eye at the top of the tower seeing everything, missing nothing and directing everything. His GMB kingdom is the equivalent of Mordor, Lord Sauron's domain....I see myself in all this as a female version of the hobbit Frodo Baggins carrying the ring, these precious claims of mine, to this tribunal of Mount Doom....I hope that by submitting my claims to the Tribunal, in the same way that the ring was submitted to the molten lava of Mount Doom, that the eye of Lord Sauron will dissolve and justice will prevail."

Certainly more flowery than the ones most lawyers produce.





Serial litigants Liable to Face Costs

The EAT has dismissed four appeals by John Berry. It is reported that Mr Berry is a serial litigant who searches the internet for job adverts advertising for a 'school leavers' or 'recent graduates'. Once he has found an advert, or one similar, he issues a claim for age discrimination and in the majority of cases it is reported that the Respondent will settle the matter for a few thousand pounds prior to any hearing.

Dismissing Mr Berry's appeals, the EAT held that those who seek to exploit discrimination legislation for financial gain are liable to find themselves facing a liability for costs. Mr Berry did not appear in person at the hearing. At last a sensible decision.

And Finally....

We are coming towards the end of another difficult year of trading. Hopefully 2011 will be a year in which we start to see the end of what had now been a long and difficult period, certainly the economists out there are hopeful and perhaps a little bit of positive thinking will go a long way.

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Sacked Accountant pursues Appeal

A trainee accountant who lost his job after being found guilty of sending a 'menacing electronic communication' is taking his appeal to the high court with the assistance of 'freedom of speech' celebrity backers and a high profile human rights QC.

On 6th January Paul Chambers tweeted "Cr*p! Robin Hood Airport is closed. You've got a week and a bit to get your s*** together, otherwise I'm blowing the airport sky high!"

The airport rated the threat as 'non-credible' and it had no affect on security at the airport. However, the tweet was eventually reported to the police.

Following conviction in the magistrates court Mr Chambers appealed to the crown court arguing that the tweet was "an ill-conceived attempt at humour." His appeal failed and he was ordered to pay a fine and legal costs totalling £3000.00. It is reported that Stephen Fry has offered to pay his fine and legal costs.

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