

Employment Law Update

by Lynsey Howes

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What better way to escape the snow and cold than curling up in front the fire with this month's newsletter. Topics this month include disability discrimination, minimum wage and injury to feelings. Enjoy.

Disability

If a medical report confirms that an employee is not disabled but the Employment Tribunal later finds that the employee is disabled should the employer be treated as having knowledge of that disability?

No held the Court of Appeal in *Donelien v Liberata UK*. In this case the employer argued that it did not know of the disability and could not reasonably be expected to have known of that disability. The Employment Tribunal agreed that the employer could not reasonably be expected to have known.

This case has been distinguished from the recent case of *Gallop v Newport City Council*, where the employer unreasonably followed the finding of an Occupational Health report which was not reasoned in its conclusions. In this case the employer had obtained Occupational Health advice, but had also had GP letters and back to work meetings with the employee prior to making its decision that the employee was not disabled.

Against this background of full consideration, the Employment Tribunal was correct to find that the employer did not know that the employee was disabled and could not reasonably have been expected to know. This provides clear guidance of the steps an employer needs to consider before making a decision about an employee.

Continuing Acts

Can the instigation of disciplinary proceedings be the start of conduct extending over a period of time, for the purposes of the Employment Tribunal time limit?

Yes said the EAT in *Hale v Brighton & Sussex University Hospitals NHS Trust*.

The Claimant was bringing claims for amongst other things race discrimination.

The NHS Trust had tried to assert that the disciplinary was a one off event and could not be said to be part of a continuing act.

The EAT disagreed, finding that the disciplinary had been the start of a process, which resulted in a state of affairs concluding with the outcome of the disciplinary. It was not reasonable for a Claimant to issue proceedings because disciplinary proceedings had started and then issue further proceedings following the conclusion of those proceedings.

It was therefore a situation which was covered by s123 Equality Rights Act, to allow for continuing act of discrimination to be linked together. So if the discrimination started in February, but did not stop until a resignation or other event in December, as long as the events could be linked together then the February events could not be out of time and protective proceedings would not need to be issued to extend the time limit..

Injury to Feelings

It is commonly known that an employee can bring a claim if they suffer a detriment as a consequence of asserting a working time right. The question for the EAT in the case of *South Yorkshire Fire & Rescue v Mansell* was whether the employee could claim injury to feelings as a consequence of that detriment.

Given the multitude of claims about working time in recent years, this is another which is unlikely to delight employers. The EAT considered that as remedy (or compensation) for working time claims was set out under s49 Employment Rights Act 1996, the same section as for other detriment claims, then it was available for the Employment Tribunal to make an award for injury to feelings in working time detriment cases. It will be left to the particular Tribunal at the time to determine whether awarding injury to feelings will be appropriate.

Payslips

On 6th April new requirements for payslips come into force. Many of you will already do this, but for the sake of clarity the requirements are:

- Payslips must state the number of hours being worked where wages vary according to time worked
- This should be displayed either as an aggregate figure or as separate figures where different rates of pay apply to different types of work.

National Minimum Wage Increases

From the 1st April 2018 the new rates for minimum wage are as follows:

- 25+ £7.83
- 21-24 £7.38
- 18-20 £5.90
- Under 18 £4.20

Please ensure you update your payroll records to ensure compliance.

And finally.....

We hope that you are remains safe in the snow. Please call us if you need advice about employee absence due to adverse weather conditions.

Bye for now.

Lynsey and the team.

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