

COOLEHADDOCK

+employment law bulletin

Welcome

It's April – which (along with October) is the month the government uses to make its twice-yearly changes to employment law. These include changes to sex discrimination laws, the first of the corporate manslaughter measures, and extension of information and consultation rights within the workforce.

The Employment Bill continues its journey through Parliament and, in anticipation of its reaching the statute book largely unchanged, Acas has broadened its scope to conciliate.

Sex Discrimination

New rules have come in under the Sex Discrimination Act 1975, which require employers to protect staff from sexual harassment by customers, suppliers and anyone else the employee encounters in the course of their work.

Employees will now be entitled to seek compensation from employers who fail to take reasonable steps to protect them from sexual harassment by a third party. This has ramifications for employers in the entertainment and customer service industries, where the business will be forced to exclude customers who sexually harass women – including patrons in pubs and restaurants who keep trying to chat up the barmaid or waitress!

Meanwhile, the Employment Appeal Tribunal has ruled that homophobic gibes against a heterosexual man are not prohibited under the Sexual Orientation Regulations 2003.

Here, the claimant faced sexual innuendo from his colleagues to the effect that he was gay, even though they knew he was not. The EAT held that the 2003 regulations do not cover this form of 'homophobic banter' (but it has given the employee permission to appeal).

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Expired Disciplinary Warnings

An employer may take expired disciplinary warnings into account when deciding to dismiss an employee, the Court of Appeal has held.

The claimant had here been given a final warning – stated to run for 12 months – for misuse of company time. A month after it expired, he and four colleagues were caught watching TV in company time and he was dismissed. His colleagues – who had not had any earlier final warnings – were not.

The court held that the dismissal was fair, and reliance on an expired warning was a relevant factor when deciding whether the employer acted reasonably. In some circumstances it may mean the dismissal was unfair, but not invariably. An unfair finding would, however, be the exception rather than the rule.

Information and Consultation Regulations

This month sees the Information and Consultation of Employees Regulations 2004 extended to apply to businesses with 50 or more employees. It previously applied only to businesses with over 100 employees.

Under the regulations, employees have the right to request their employer to inform them of, and consult with them about, business matters which affect their employment. If at least ten per cent of the workforce ask for it, the employer must set up a regular system for information and consultation. Employers can be fined up to £75,000 if they fail to do so.

Corporate Manslaughter

The Corporate Manslaughter and Corporate Homicide Act 2007 is now in force. It has been introduced with the intention of making it easier for larger organisations to be successfully prosecuted, where a corporate management failing has led to death.

An organisation will be guilty of the new offence of corporate manslaughter if the way in which its activities are managed or organized by its senior management causes a death and amounts to a gross breach of a duty of care to the deceased. An organisation guilty of corporate manslaughter will be liable to an unlimited fine.

ACAS Revises Policy

Acas has announced that it will now conciliate in all tribunal cases, whether or not the fixed period for conciliation has expired. This move is in line with an anticipated change in law, abolishing fixed periods of conciliation (normally thirteen weeks from the start of a claim).

These fixed periods, which were introduced in 2004, were intended to encourage parties to settle cases at an early stage. But this just did not happen, as usually it takes a looming tribunal hearing to get the other side negotiating sensibly. The fixed periods therefore proved impractical and unpopular.

The change largely restores the position pre-2004 when Acas had a duty to offer conciliation in nearly all tribunal cases.

Healthier Workplaces

Fresh advice and guidance has followed the findings of National Director for Health and Work Dame Carol Black's review of the health of the working age population.

Acas has published a new guide called Health, Work and Wellbeing (download at <http://www.acas.org.uk>) – which covers topics such as:

- recognising health problems among employees
- what makes a healthy workplace
- a health, work and wellbeing checklist
- other sources of information

The HSE has meanwhile updated its health, work and wellbeing webpage to reflect Dame Carol's conclusions – see <http://www.hse.gov.uk/hwwb/>

AND SOME SNIPPETS

Minimum wage increase

The annual increase in the National Minimum Wage sees the adult rate rise from £5.52 to £5.73 an hour from 1st October. The hourly rate for 18-21-year-olds goes up from £4.60 to £4.77, while the rate for 16- and 17-year-olds rises from £3.40 to £3.53.

Tax loophole closed

The Income Tax (Pay As You Earn) (Amendment) Regulations 2008 close a loophole allowing HMRC to charge tax a second time to employers whose employees, believing themselves to be self-employed, had already paid tax on their earnings.

Redundancy consultation

The Employment Appeal Tribunal has reaffirmed that an award of 90 days' pay should normally be awarded to each employee where the employer has failed to engage in collective consultation over prospective redundancies. Minimum consultation periods are 30 days where between 20 and 99 employees are being made redundant, and 90 days where over 100 employees are being made redundant.

Screen advice

The Health and Safety Executive has a new section on its website dedicated to offering advice on display screen equipment (DSE), which includes computer monitors. It includes guidance on safe working with monitors, case studies, how to carry out a DSE assessment, and advice for call centre working practices.

Tackling illegal working

Employers face a fine of up to £10,000 for every illegal migrant they employ under new measures. The fine forms part of a new civil system created under the Immigration, Asylum and Nationality Act 2006 which also puts in place a new criminal offence of knowingly using illegal migrant labour. This carries a maximum two-year jail sentence and/or unlimited fine.

Mothers at work

The Health and Safety Executive has launched a dedicated website section for new and expectant mothers which includes advice, FAQs, and case studies. Details

<http://www.hse.gov.uk/mothers/index.htm?ebul=hsegen/10-mar-2008&cr=4>

Workers on strike – deducting pay

The High Court has considered how much pay an employer can deduct from the wage of a striking worker and ruled that only the amount an employee could recover in a lawful deductions claim can be taken. For someone working 260 days a year, this would be 1/260th of their salary. The employer cannot go further and deduct the actual loss to the business – for example, by including the pro rata element of holiday pay entitlement.

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This newsletter is a guideline only to recent changes in employment law. You are advised to seek Legal Advice from our Employment Group on any specific queries you may have.