

To celebrate the Employment Appeal Tribunal's 30th anniversary, journalists at The Times trawled the archives and dusted off some of the weirdest employment disputes of recent years. Have a look at <http://business.timesonline.co.uk/tol/business/law/article2047646.ece>

And some snippets...

Acas to cover appeal cases

Acas is extending its conciliation provision to cover cases referred to it by the Employment Appeal Tribunal. This may help avoid costly appeals over relatively small sums of money.

European consultation

A Europe-wide consultation exercise is under way aimed at informing the European Commission in formulating new measures — scheduled for next year — to tackle discrimination on the basis of gender, religion, belief, disability, age or sexual orientation in areas beyond the workplace.

Migrant workers

The TUC has produced a new 12-page guide targeted at both employers and unions, stating that migrants tend to be more vulnerable to illness, injury or even death at work because of a lack of safety training, inadequate clothing

and equipment, and poor language skills. It is available at <http://www.tuc.org.uk/extras/safetymw.pdf>

Mediation overview

A revamped Acas mediation FAQ section uses video clips to offer an overview of the process as well as the usual question-and-answer format. More information here — <http://www.acas.org.uk/index.aspx?articleid=1009>

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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.

Welcome

As we head towards high summer, there is confirmation of the new statutory holiday entitlements taking effect later this year, and yet another increase in the minimum wage. We also consider the new smoking ban which came into force on 1st July.

And for some rather more amusing reading, we thought we would recommend a collection by The Times of some of the weirdest employment disputes in recent years.

Smoking ban

From 1st July it became an offence to smoke in all enclosed workplaces or public places. The key points of the new law are as follows:

- almost all workplaces will be smokefree. Public transport and work vehicles used by more than one person will also need to be smokefree
- A5 size 'no-smoking' signs must be displayed in all smokefree premises and vehicles (you can download the sign at http://www.smokefreeengland.co.uk/files/a5_sign_sf_premises.pdf)
- Staff smoking rooms and indoor smoking areas will no longer be allowed, so anyone who wants to smoke will have to go outside.
- Managers of smokefree premises and vehicles will have legal responsibilities to prevent people from smoking.

More significantly for employers, it became an offence to permit smoking in the workplace, and to fail to put up prominent 'non-smoking' signs.

Most breaches will be dealt with by fixed penalties. Technically, a separate fine can be levied in respect of every single cigarette lit – although in practice this is unlikely.

The fines are:

- £50 for smoking in a non-smoking area (£30 if paid within 14 days);
- £200 for failing to display a non-smoking sign (£150 if paid within 14 days);
- and,
- £2,500 for failing to prevent smoking in a smokefree

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workplace or vehicle. This offence will be prosecuted in the magistrates' court, rather than dealt with by a fixed penalty.

For more information, visit

<http://www.smokefreeengland.co.uk>

Annual leave increase

The government's plans to finalise the increase in minimum annual leave are now complete, giving employees a right to eight days' bank holidays on top of the 20 days leave they currently receive (at present, employers who give their staff a paid day off on bank holidays can require them to take these days from their four week entitlement).

Minimum annual holiday entitlement will therefore increase from 20 days to 28 days per year. Employers remain entitled to set the dates on which employees take leave, meaning that there remains no legal right to have a paid day off on bank holidays.

The first four days extra paid leave will be introduced from 1 October 2007 and the next four days from 1 April 2009.

Meanwhile, the courts have decided that an employer who does not give a part-time employee time off to reflect Monday bank holidays is not discriminating under the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (McMenemy v Capita Business Services Ltd.)

The court found that Mr McMenemy — who worked Wednesday to Friday — had not been treated less favourably because of his part-time status. He was not entitled to time off in lieu of Monday bank holidays because he did not work on Mondays, and a full-timer working Tuesday-Saturday would have been treated in the

same way as under the company contract of employment time off in lieu for public holidays was only due 'where these fall on your normal working day'. Accordingly he lost his claim.

Minimum wage

The National Minimum Wage for those aged 22 or more is due to go up from £5.35 to £5.52 on 1 October 2007.

There will also be increases from £4.45 to £4.60 for 18-21 year-olds and from £3.30 to £3.40 for 16-17 year-olds.

Meanwhile, consultation is under way on proposed changes to how the National Minimum Wage Act 1998 relates to voluntary workers — those who receive no monetary payment or benefits in kind, other than expenses, subsistence or accommodation, and relevant training. At present, they are not entitled to the minimum wage – but this might change.

Further consultation is under way to impose a new regime of fines on employers who pay below the minimum wage. Businesses could also have to pay interest or other cash to workers they have underpaid, on top of repaying arrears, under the proposed new scheme.

Age discrimination

The Equality Tribunal in the Republic of Ireland has made an age discrimination ruling on questions asked during the job interview process.

In *Cunningham v BMS Sales*, the job application form included questions such as 'living with parents/renting/mortgaged accommodation', 'number of children', 'age', and 'date of birth'.

The applicant responded with incorrect information on the grounds that the questions were 'irrelevant and invasive'

and despite being suitable for the job was not appointed. The tribunal held that he had been discriminated against on the grounds of age.

Meanwhile, the age discrimination regulations are the subject of a number of new surveys and studies, among them one produced by the Chartered Institute of Personnel Development examining the legislation's impact on recruitment.

The study found that some employers remain confused about whether they need to close graduate recruitment schemes or discard advertising language like 'experienced', 'young', or 'dynamic'. The publication — which also gives examples of innovative practice and shows how some employers are already achieving age diverse workplaces — is available on the CIPD website at www.cipd.co.uk/research.

Another study of 50 businesses with a combined workforce of more than 78,000 found only 11 per cent of employers felt the age regulations had had a negative impact on their business.

However, one in ten had already received an age-related claim, more than 40 per cent had received requests to work beyond retirement age and 70 per cent felt they needed further guidance on what constitutes justifiable discriminatory treatment.

Be nice to employees who are suing you!

Forceful and intimidating letters sent by an employer to a group of employees bringing tribunal claims can amount to victimisation, the House of Lords has ruled in *St Helens Borough Council v Derbyshire*.

The Law Lords held that the employer — who had written to 39 equal pay claimants telling them they might be responsible for costing their colleagues their jobs if they won — had subjected their employees to a detriment on the grounds that they had brought a tribunal claim. They will now be awarded compensation for the victimisation, which is quite separate from their equal pay claims.

Commercial Agents

Many employers are unaware of an obscure European law, which gives certain categories of self-employed workers significant rights if they are dismissed.

Any 'commercial agent', meaning a self-employed intermediary who has authority to negotiate and conclude sales for the 'employer', is normally entitled to a large lump-sum payment reflecting the future value of their business if their position is terminated. The most common type of commercial agent is a self-employed travelling salesman.

Upon termination of their contract, they are entitled to a lump sum reflecting the value of their business, territory or client-base. The House of Lords has stated that the value of their claim (which they bring in the county court) is equivalent to the resale value of their territory, i.e. how much another travelling salesman might pay to take over the territory and become entitled to the future commission or income stream. Unlike unfair dismissal claims, entitlement to this sum is (almost) automatic – no unfairness in the dismissal needs to be shown.

Anybody who engages the services of self-employed salesmen should seek advice before terminating such contracts.

Weirdest Employment Disputes