

COOLEHADDOCK

+employment law bulletin

WELCOME

To our first bulletin for 2006.

The next twelve months will be turbulent for employers and HR professionals and us! The DTI has promised the new TUPE regulations will be published in the Spring – although it is now over five years since they were first broached by the government. The final version of the age discrimination laws will also be published in the Spring, and will come into force towards the end of the year. The courts will continue to hand down decisions informing, and occasionally, confusing employers as to what their duties are in the workplace.

We will continue to provide these bulletins to help you navigate the maze of employment laws. As always, please do contact us with any suggestions as to how to improve this newsletter, or if you have any employment issues we can assist with.

Increase in tribunal awards

The annual increase in limits on various tribunal awards takes effect on 1 February 2006. The main rises are:

- Limit on a week's pay: from £280 to £290
- Maximum compensatory award: from £56,800 to £58,400.

This brings the total potential liability for a normal unfair dismissal claim to £67,100. Employers facing certain types of unfair dismissal claims (such as dismissals for whistleblowing) and all discrimination cases remain vulnerable to unlimited compensation awards.

The full list of increases can be found in the Employment Rights (Increase in Limits) Order 2005 at <http://www.opsi.gov.uk/si/si2005/20053352.htm>

Statutory grievance letters

Under new rules which have now been in force for about 15 months, employees must send a formal grievance letter to their employer before they are allowed to bring certain types of tribunal claims, including construction dismissal and most types of discrimination.

march 2006

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Following a series of decisions from the Employment Appeal Tribunal, guidance is beginning to emerge on what the courts see as constituting a formal grievance letter under the Employment Act 2002.

The claimant in *Shergold v Fieldway Medical Centre* wrote to her employer setting out her reasons for resignation, but she did not ask for the document to be treated as a formal grievance. The employment tribunal held that it did not amount to a formal grievance letter, but the Employment Appeal Tribunal disagreed, stating that:

- there is no formality required in a statutory grievance letter – all the employee must do is set out the complaint in writing;
- the statutory procedures should rarely lead to the claimant being debarred or the employer being liable for automatic unfair dismissal as the statutory grievance procedure's purpose is to allow the parties a chance to settle before turning to the courts;
- the claimant does not need to state that the letter amounts to a grievance or an invocation of the grievance procedure.
- *Commotion Ltd v Ruddy*, the claimant claimed constructive dismissal after her employer unreasonably refused a written request to vary her working pattern. The Employment Appeal Tribunal upheld the employment tribunal's decision that her request amounted to a formal grievance letter, stating that it was irrelevant that the purported grievance letter dealt mainly with other issues.

Finally, in *Thorpe & Soleil Investments v Poat & Lake*, the EAT repeated that it does not matter whether or not the employee intended to raise a grievance within the body of the letter, adding that the employee does not need to comply with a contractual grievance procedure for the letter to amount to a valid statutory grievance.

Ministers of religion

The House of Lords has, in *Percy v Secretary of State for Work and Pensions*, overturned long-standing laws and ruled that ministers of religion are employees for the purposes of the Sex Discrimination Act 1975.

Ms Percy, an ordained Church of Scotland minister, had claimed discrimination under the Act but the employment tribunal, Employment Appeal Tribunal and Court of Session all followed existing law and held that she was not an employee.

Upholding her appeal, the House of Lords held:

- because somebody is an office-holder does not preclude them from simultaneously working under a contract
- a claim should not of itself be defeated by difficulties in identifying the 'employer'
- the offer and acceptance of a church post, including provision for duties, remuneration and holidays, gives rise to an intention to enter legal relations.

Disability law change

From 5 December, anybody suffering from cancer, multiple sclerosis or HIV will be deemed to have a 'disability' and therefore be entitled to the protection of the Disability Discrimination Act 1995.

A further change makes it easier for people suffering from mental illness to fall within the definition of 'disabled'. Before 5 December, a mental illness had to be 'clinically well recognised' in order to qualify. From 5 December, that requirement is removed.

One of the main effects is that employers will be under a duty to make reasonable adjustments for those suffering from these conditions, when previously they may not have had to. Such adjustments will include allowing the employees to change to flexible working patterns in order to accommodate medical treatment.

Equal pay ruling

The Employment Appeal Tribunal has decided that the equal pay “genuine material defence” requires objective justification.

This is a departure from the traditional UK approach requiring an employer simply to be able to account for a pay difference by referring to a factor that is material but is not the employee’s gender – unless the factor is itself one which may discriminate against female employees, in which case it must be objectively justified.

Instead, in *Sharp v Caledonia Group Services Ltd*, the Employment Appeal Tribunal has relied on the 2001 European Court of Justice authority of *Brunhoffer v Bank Der Osterreichischen Postsparkasse AG* requiring objective justification, choosing not to follow its own decision last year in *Parliamentary Commissioner for Administration v Fernandez*, which held that a genuine material factor not related to sex was sufficient.

This ruling makes it much harder for employers to justify differences in pay, particularly in ‘red circling’ cases. However, permission has been given for the employer to appeal to the Court of Appeal, so the decision may end up being overturned in the next twelve months.

New from Acas ...

An updated web version of the Parents at Work advisory booklet has now been posted on the Acas website, with the October 2004 print version available to download as a PDF. Advice is offered on:

- how employers can help parents
- how parents can help employers
- developing a parents-at-work policy
- handling the policy’s impact on other staff
- legal requirements.

Also updated is

- the equal opportunities section of the A-Z of Work web handbook, offering an overview of legislation together with links to other relevant sites
- a new section on the workplace impact of the civil partnerships legislation which came into effect on 5 December
- a new, free online learning course to help understand and prevent workplace bullying, with topics including definitions of bullying and harassment, recognition and prevention, and the consequences of inaction. This is seventh such online course, which requires initial user registration.
- an updated version of its 56-page PDF *Religion or Belief in the Workplace – guidance to Employment Equality (Religion or Belief) Regulations 2003*.
- an updated website guidance on flexible working.

Further details from <http://www.acas.org.uk>

... from the DWP

Recent additions to the Department of Work and Pensions website include a Guide to Industrial Injuries Disablement Benefits, offering detailed information about what the State can provide those disabled as a result of a work-related injury or disease. Available (HTML only) at <http://www.dwp.gov.uk/db1/>

Also available, as a 12-page PDF, is *Adjusting for Better Business*, a guide targeted at SME’s on how to comply with the Disability Discrimination Act 1995. From <http://www.dwp.gov.uk/employers/dda/booklet.asp>

... and from the HSE

The Health and Safety Executive launches a new campaign on 9 January – with dedicated website – highlighting potential savings small businesses can make through good health and safety practice. Details from <http://www.hse.gov.uk/betterbusiness/index.htm>

Updated is the HSE web page dedicated to avoiding slips and trips, with a range of free material including PDFs and a PowerPoint presentation, together with video clips, statistics, and details of paid-for publications. Go to <http://www.hse.gov.uk/slips/information.htm>

Holiday pay

Last year, we reported that the Court of Appeal had decided that employees on long-term sick did not continue to accrue the right to four weeks' paid holiday each year.

The House of Lords has recently given permission to appeal that decision. This means that the issue – thought by employers to have been resolved – remains uncertain for the time being.

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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.