Law Management Section HR Forum
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EMPLOYMENT LAW UPDATE 2015

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Topics

- Employment Status
- Pensions auto-enrolment
- Contracts
- Pay, benefits and leave
- Health + Work Service
- Disciplinary + Grievance Procedures
- Discrimination
- Up and Coming
Employment Status

Employee - worker - self employed?

LLP Members are “workers”:

*Clyde & Co LLP v Bates Van Winkelhof [2014]*
- whistleblower
- fixed share partner + member LLP
- integral part of the LLP’s business
- Worker under s 230 (3)(b) ERA 1996

Employment Status

Law firm non-partner consultant?

*The Hospital Medical Group Ltd v Westwood [2012]*
- Dr Westwood self employed
- But - integrated in to the business
- Worker under s 230 ERA 1996
- Entitled to holiday pay

Pensions Auto - Enrolment

Pensions Act 2008

Duty to enrol workers if paid qualifying earnings
s.13 PA 2008:
“means sums of any of the following descriptions -
salary, wages, commission, bonuses and overtime. .”

Consultants
Fixed share partners
Partners
Contracts

Sunrise Brokers LLP v Rodgers [2014]
- Unauthorised absence during notice period
- Stopped paying wages
- Post termination restrictions still applied

Re-User Collections Limited v Sendall [2014]
- Amended contract - new restrictions
- Not enforceable
- Requires “some real monetary or other meaningful benefit”

Contracts

Norman v National Audit Office EAT [2014]
- Contract was “subject to amendment”
- Not sufficient to vary contract unilaterally

Williams v Leeds United Football Club [2015]
- Redundancy dismissal + notice
- Pornographic emails found - 5 years old
- Dismiss for gross misconduct instead

Pay, benefits and leave

Flexible Working Regulations 2014
- Extends right to any employee
- Refusal on 8 business grounds only

Shared Parental Leave and Pay
- Mother and “partner” - birth after 5 April 2015
- Up to 50 weeks leave and 37 weeks statutory pay
- Continuous employment + earnings tests
- Blocks or “discontinuous” periods
Pay, benefits and leave

Ante-natal care
- Husband, civil partner or partner of pregnant woman
- Unpaid time off for 2 ante-natal appointments
- 6 hrs 30 minutes each

Parental Care
- Extended to parents of any child under 18 years
- Unpaid leave
- Same conditions as previously

Pay, benefits and leave

Holiday Pay
A worker is entitled to statutory holiday pay reflecting their normal remuneration
British Gas v Lock ECJ [2014]
- Salary + commission
Bear Scotland v Fulton etc [2014]
- Salary plus normal non-guaranteed overtime
Conley King v The Sash Window Company [2014]
- Commission only

Pay, benefits and leave

The Deduction from Wages (Limitation) Regulations

“To protect businesses from potentially damaging impact of large backdated claims”.

From 1st July 2015 - maximum 2 years from claim
Health and Work Service

New Fit for Work Service
- Free Occupational Health Assessment after 4 weeks absence from work
- Free advice via phone line and website for employers, employees and GP’s
- Roll out during 2015

Concerns?

Internal procedures - ACAS

Choice of “Companion”
Toal v GB Oils [2013]
- Request for particular companion
- Whether reasonable choice = irrelevant
Revised ACAS Code of Practice on Disciplinary and Grievance Procedures [11 March 2015]
- Absolute right to request choice of companion
- Provided request to be accompanied is reasonable
- Statutory categories

Discrimination

Age Discrimination
Mandatory retirement - is 65 the right age?

Seldon v Clarkson Wright & Jakes [2014] EAT
- Partnership deed: retirement at 65
- Direct age discrimination
- BUT: justified on evidence, for
  - Retention
  - Planning
  - ? Collegiality
Discrimination - Disability

**Kaltoft v The Municipality of Billund [2014]**
- Obesity is not a “protected characteristic”
- If hinders full participation, can be disability
- If morbidly obese and real impact on ability to work

*Note:*
**Walker v Sita Information [2013]**
- 21 stone and wide range of symptoms re obesity
- Is there an impairment
- Is it physical or mental

Discrimination - Disability

**Hainsworth v Ministry of Defence [2014]**
- Disabled daughter of employee
- No duty to make reasonable adjustments to PCP

Contrast:
**Coleman v Attridge LawECJ [2008]**
- Non-disabled employee and disabled son
- Direct discrimination claims possible

**Doran v Department for Work and Pensions [2014]**
- Employee on long term sickness absence
- Reasonable adjustments not required

Discrimination - Disability

**Metroline Travel Limited v Stoute**
- Type 2 Diabetes controlled by diet
- Not a qualifying disability

**Chawla v Hewlett Packard [2015]**
- Long term sickness absence
- Removal of access to company email - “PCP”
- Failure to adjust - disability discrimination
Discrimination

Sex Discrimination
Shuter v Ford Motor Company [2014]
- Male employee: statutory paternity pay
- Female employee: enhanced maternity pay
- Differential justified

Sefton Borough Council v Wainwright [2014]
- Maternity leave and redundancy
- Male employee offered SAE instead
- Not necessarily discriminatory - reason may justify

Race & Caste
Chandhok v Tirkey [2015] IRLR
- 'Caste' - discrimination not within Equality Act 2010
- Relevant facts can be within “ethnic origin”
- If so, protected

Up and Coming
Small Business, Enterprise and Employment Bill 2014
- Zero Hours contracts: exclusivity

The Equality Act 2010 (Equal Pay Audits) Regulations 2014

Employment Tribunal Reform?

General Election 7th May 2015
Next Government - new plans?