

EMPLOYMENT LAW NEWS ROUND UP

APRIL 2004

EMPLOYER LIABILITY FOR WORKPLACE STRESS

The House of Lords has ruled, for the first time, on the issue of employer's liability for workplace stress in **Barber v Somerset County Council** (cited in the Court of Appeal as **Hatton v Sutherland** (2002) 2 AER 1). Their Lordships have broadly followed the approach adopted by the CA, confirming that employers will be liable in damages for workplace stress only in circumstances where the employee's illness was reasonably foreseeable and the employer failed to take steps to prevent it.

NO DUTY OF CARE FOR EMPLOYEE'S ECONOMIC WELFARE

There is no general duty of care incumbent upon an employer to take reasonable care for the economic well being of an employee. Specifically, an employer is not obliged to give his employees financial advice in relation to benefits accruing from employment: **Crossley v Faithfull and Gould Holdings Ltd** 29.3.04 TLR, CA.

MATERNITY LEAVE AND PAY

Pursuant to the Pregnant Workers Directive and the Working Time Directive, pregnant workers are entitled to take their annual leave at a time other than during the period of their maternity leave: **Merino Goacutemez v Continental Industrias del Caucho ECJ**. Pay rises awarded after the start of statutory maternity pay (SMP) must be taken into account in calculating SMP: **Alabaster v Woolwich plc ECJ**.

NO DAMAGES FOR LOSS OF OPPORTUNITY TO CLAIM UNFAIR DISMISSAL

A summarily dismissed employee cannot recover damages at common law for the loss of the opportunity to claim unfair dismissal in circumstances where they have been dismissed with less than one year's continuous employment but, if they had received their contractual notice, they would have been employed for more than one year: **Harper v Virgin Net Ltd** 16.3.04 TLR, CA.

EMPLOYMENT STATUS

In any case where there is a triangular arrangement between applicant, employment agency and client, tribunals should always consider whether an implied contract of employment had come into existence between the applicant and the end client: **Brook Street Bureau (UK) Ltd v Dacas** 19.3.04 TLR, CA. A self employed taxi driver did not fall within the extended definition of "employment" set out at section 78 of the Race Relations Act 1976. The test was whether the dominant purpose of the contract was

that the applicant should be obliged personally to execute any work or labour:
Mingeley v Pennock and Ivory trading as Amber Cars 4.3.04 TLR, CA.

RIGHT TO BE ACCOMPANIED AT DISCIPLINARY/GRIEVANCE HEARING

There is no right of appeal to the EAT from a decision of the employment tribunal, under section 10 and 11 ERA 1999, concerning the right of a worker to be accompanied to a disciplinary or grievance hearing: **Refreshments Systems Ltd v Wolstenholme** 2.3.04 TLR, EAT.

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