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EMPLOYMENT LAW NEWS ROUND UP

FEBRUARY 2004

SEMINAR

The Employment Law Group is holding a one hour seminar at 6.00pm on Tuesday, 20 April 2004 on **DEVELOPMENTS IN THE LAW OF RESTRICTIVE COVENANTS AND CONFIDENTIAL INFORMATION**. There is no charge for this seminar and delegates will receive **1 hour CPD** accreditation. If you and/or any other member of your organisation would like to attend please contact our junior clerk, Lena Connolly on 020 7404 7000 or email lconnolly@thomasmore.co.uk

EQUAL PAY

A number of questions were addressed by the EAT in the pension rights of part time workers claim in **Preston v Wolverhampton Healthcare NHS Trust (No. 3)** (2004) IRLR 96, EAT. (1) The Equal Pay Act is breached where pension scheme membership is compulsory for full time staff but part time staff are excluded. (2) There is no breach of the Act where pension scheme membership is compulsory for full time staff and optional for part time staff. (3) There is not a continuing breach of the Act where an employee's failure to join the pension scheme is due to the fact that the employer has failed to inform staff of the removal of a barrier to membership. Although such a failure may amount to a breach of the implied duty to inform, that is a separate claim and did not relate to the right to an equality clause. (4) In an equal pay claim against a transferor, time does not begin to run until the end of the employee's employment with the transferee. National legislation that prohibits a person from marrying their transsexual partner with the effect that the partner was not entitled to a survivor's pension scheme under an occupational pension scheme amounts to discrimination contrary to the EU principle of equal pay: **KB v National Health Service Pension Agency** TLR 15.1.04, ECJ. A civil servant in a Government department is not entitled to use a civil servant of opposite sex in a different Government department as a comparator for the purposes of claiming equal pay: **Department of Environment v Robertson** EAT/0273/03.

DISCRIMINATION

Requiring male employees to wear a collar and tie does not necessarily amount to sex discrimination. The question that needs to be addressed is whether, applying current standards of conventional attire, the level of smartness required by the employer of all its staff can only be achieved by men wearing a collar and tie: **Department for Works and Pensions v Thompson** EAT/0254/03.

TRANSFER OF UNDERTAKINGS

The Business Transfers Directive does not apply to cases of irretrievable insolvency and cessation of business: **Perth & Kinross Council v Donaldson** (2004) IRLR 121, EAT. Where the activity taken over by a new contractor is based essentially on equipment, the new contractor's failure to take over an essential part of the staff employed by its predecessor to perform the same activity does not preclude the existence of a transfer of undertaking. In the present case (a hospital catering contract) a defining feature was the obligation to prepare meals in the hospital kitchen. Transfer of the premises and equipment provided by the hospital was therefore sufficient to make this a transfer of an economic entity: **Abler v Sodexo MM Catering Gesellschaft** (2004) IRLR 168, ECJ.

STRESS

To succeed in a claim for damages for psychiatric illness caused by stress at work, the high threshold set in **Sutherland v Hatton** (2002) IRLR 263 must be met. It is not enough to establish that it was reasonably foreseeable that overwork would lead to stress, what must be established is that it was reasonably foreseeable that it would lead to a breakdown in the stressed employee's health: **Bosner v RJB Mining (UK) Ltd** (2004) IRLR 164, CA.

HUMAN RIGHTS

Dismissal of a probation officer because of his involvement, outside of work, in bondage, domination and sado-masochism activities was fair and did not amount to a breach of his rights under the Human Rights Act to respect for his private life and to freedom of expression: **Pay v Lancashire Probation Service** (2004) IRLR 129, EAT.

PRACTICE AND PROCEDURE

An Employment Tribunal hearing may be unfair in circumstances where one of the members had given the appearance of falling asleep and not concentrating on the case: **Stansby v Datapulse plc** TLR 28.1.04, CA.

The Thomas More Chambers' Employment Law Group provides a full complement of employment law services, ranging from representation, for both employers and employees, at all tribunal and court levels; legal advice on all areas of employment law; and drafting (from contracts of employment to settlement agreements). If you would like further details of the services provided and/or information about our fee structure, please contact our Senior Clerk, Chris Hallett, on 020 7404 7000 or email clerks@thomasmore.co.uk.

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