

THOMAS • MORE • CHAMBERS

EMPLOYMENT LAW NEWS ROUND UP

JANUARY 2003

SEMINAR

DAMAGES IN EMPLOYMENT CLAIMS

Monday, 17 February 2003, 5.00pm

This 2 hour early evening seminar provides a practical and comprehensive update of the principal elements that need to be considered in determining the value of unfair dismissal, wrongful dismissal and discrimination claims. It further examines the issues of costs in Employment Tribunals and the sometimes complex field of unauthorised deductions from wages. Attendance should materially assist practitioners in employment law in determining whether to accept cases on a no win no fee basis and in determining a realistic approach to settlements.

This seminar is specifically designed for practitioners who have a limited to medium level of experience in this area. It will be presented by barristers who regularly appear in employment cases. The agenda is set out below.

This seminar carries 2 hours CPD accreditation. Attendance is limited to two delegates per organisation. If you or another member of your organisation would like to attend please contact our junior clerk, Lena Connolly, on 020 7404 7000 or elg@thomasmore.co.uk

We look forward to hearing from you.

AGENDA

4.50 - 5.00pm Enrolment, tea and coffee

5.00 - 5.10 Introduction

5.10 - 5.45 Assessing the Value of Unfair and Wrongful Dismissal Claims

5.45 - 6.00 Costs in Employment Tribunals

6.00 - 6.10 Break

6.10 - 6.40 Valuing Discrimination Claims

6.40 - 7.00 Unauthorised Deductions from Wages

7.00 - 7.10 Questions and Answers

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INCREASE IN AWARDS

The Employment Rights (Increase of Limits) (No. 2) Order (2003/2927) increased the limits on awards in respect of cases where the appropriate date falls on or after 1 February 2003. The said increases include raising the limit for unfair dismissal compensation from £52,600 to £53,500 and the maximum "week's pay for the purpose of calculating statutory redundancy or basic unfair dismissal awards has risen from £250 to £260.

HEALTH AND SAFETY

The duty on employers under the Control of Substances Hazardous to Health Regulations (SIs 1988/1657; 1994/3246; and 1999/437) to protect employees from substances hazardous to health is absolute: **Dugmore v Swansea NHS Trust** 9.12.02, TLR, CA. An employer is not liable for breach of statutory duty if equipment he has provided was suitable for use by employees in the context of reasonably foreseeable health and safety standards and was unsafe only because it was deliberately misused by an employee. (Scaffolding tower on which Claimant working toppled by deliberate act of fellow employee): **Horton v Taplin Contracts Ltd** 25.11.02, TLR, CA.

SEX DISCRIMINATION

In light of the ECHR decision in Goodwin v United Kingdom a male to female sex change transsexual was entitled to be treated as female for the purposes of her employment, except where there are significant factors of public interest to weigh against the interests of the individual in obtaining legal recognition of her gender reassignment. The police had therefore discriminated against the Applicant when her application to serve as a woman police officer was rejected on the grounds that she could not carry out searches on female suspects: **Chief Constable of West Yorkshire Police v A** (2003) IRLR 32, CA. Only in the most exceptional of cases would it be appropriate to award more than £25,000 for injury to feelings. Awards of less than £500 should be avoided as derisory: **Chief Constable of West Yorkshire Police v Vento** 27.12.02, TLR, CA.

RACE DISCRIMINATION

A single act of racial abuse does not necessarily amount to harassment. "Harassment" involves two elements: (a) targeting of the person being harassed and (b) the causing of distress to the target. In many cases the second element will be easy to establish but that does not entitle a Tribunal to assume the second element nor to decide that proof of the racially abusive language creates an irreversible presumption of detriment: **Thomas v Robinson** (2003) IRLR 7, EAT.

UNFAIR DISMISSAL - PRACTICE AND PROCEDURE

When dismissing for misconduct, an employer was not obliged to arrange a hearing which would give the employee an opportunity to cross examine any complainants in line with the decision of the Northern Ireland Court of Appeal in Ulsterbus v Henderson: **Santamera v Express Cargo Forwarding** 13.1.03, TLR, EAT.

UNAUTHORISED DEDUCTION FROM WAGES

A reduction in employees' pay following the unilateral introduction of short time working by the employer amounts to an unauthorised deduction from wages within the meaning of section 13 ERA 1996: **International Packaging Corporation (UK) Ltd v Balfour** (2003) IRLR 11, EAT. Where a worker's employment is terminated during the course of a leave year and, at the date of termination, that worker has taken proportionately more leave in the leave year than he or she is entitled to under the Working Time Regulations, the employer cannot recover the excess holiday pay as an "overpayment of wages" under section 14 ERA 1996 unless a "relevant agreement" makes express provision for such a course of action: **Hill v Chapell** (2003) IRLR 19, EAT.

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