

## EMPLOYMENT LAW NEWS ROUND UP

MARCH / APRIL 2003

### EMPLOYMENT ACT 2002 IMPLEMENTATION

Certain parts of the 2002 Act came into effect on 6 April 2003: Parents of children under the age of six (18 if the child is disabled) gain the right that requests for flexible working arrangements will not be rejected without good business reasons. The right to maternity leave increases, for women with 26 weeks plus service to one year (with 26 weeks ordinary maternity leave and 26 weeks unpaid additional maternity leave. Women with less than 26 weeks service will be entitled to 26 weeks maternity leave. The standard rate for statutory maternity leave is increased to £100 per week. Entitlement to two weeks paid paternity leave (at same rate as statutory maternity pay) has been introduced. New adoption rights came into effect and a questionnaire procedure (analogous to the existing procedure available in discrimination cases) was introduced under the Equal Pay Act.

### MINIMUM WAGE

The Government has announced that the national minimum wage will rise in October this year from £4.20 per hour to £4.50 per hour.

### UNFAIR DISMISSAL

Guidelines have been provided for determining whether the reason for an employee's dismissal fell within section 57A ERA 1996 (time off from work for a dependent on grounds of force majeure) and is, therefore, automatically unfair. (1) Did the applicant seek to take time off during working hours? If yes, how often and when? (2) Did the employee inform the employer as soon as reasonably practicable of the absence and of the anticipated length of the absence? If not was that because she could not inform her employer until she returned to work? If this requirement (section 57A(2)) is not complied with, section 57A does not apply. (3) Was the reason for the absence a reason within section 57A(1)? If yes, was the amount of time taken off reasonable? (4) If section 57A(1) applies, was the principal reason for dismissal that the employee had taken or sought to take that time off work? The operational needs of the employer are not a relevant consideration: **Qua v John Ford Morrison Solicitors** (2003) IRLR 184, EAT. An employer is not obliged, when conducting a misconduct hearing, to give the employee an opportunity to cross-examine complainants, upholding the approach laid down by the Northern Ireland Court of Appeal in *Ulsterbus v Henderson* (1989) IRLR 251: **Santameera v Express Cargo Forwarding t/a IEC Ltd** 13.1.03 TLR, EAT. It is not appropriate to adopt a test equivalent to the "band of reasonable responses" test when determining whether an offer of alternative employment had been unreasonably refused pursuant to section 141(2) ERA 1996. The employee's conduct was to be judged on the basis of the facts as they reasonably appeared to him/her at the time the decision was made: **Hudson v George Harrison Ltd** 15.1.03 TLR, EAT.

### WORKING TIME

The definition "young worker" in the Working Time Regulations covers individuals between the ages of 15 and 18 and who are "over compulsory school age". It is not meant to cover children. The applicant, a paper boy, was of compulsory school age and therefore not entitled to the annual leave and other benefits in the Working Time Regulations. The relevant legislation for determining the applicant's annual leave rights was section 18 of the Children and Young Persons Act 1933: **Addison t/a Brayton News v Ashby** (2003) IRLR 211, EAT.

## RACE DISCRIMINATION

It was just and equitable to extend time to hear a complaint of racial discrimination brought nine years after the discrimination complained of in circumstances where (a) the applicant had only realised he had an arguable case after seeing his personnel file and (b) he commenced his action within 3 months of having seen his file. There is no obligation to consider the matters listed in section 33(3) of the Limitation Act 1980: **London Borough of Southwark v Afolabi** (2003) IRLR 220, CA. The role of assessors, pursuant to section 67(4) RRA 1976 in racial discrimination claims in the county court was to assist the judge evaluating the evidence. The judge alone, however, was responsible for making the decision: **Ahmed v University of Oxford** 17.1.03 TLR, CA.

## DISABILITY DISCRIMINATION

In determining whether there was a duty on an employer to make an adjustment by way of relocating the disabled employee it is not essential for the steps laid down in *Morse v Wiltshire County Council* (1998) IRLR 352 to be followed sequentially as long as it is clear from the tribunal's decision that it properly considered whether the requirements of the 1995 Act were satisfied: **Beart v HM Prison Service** (2003) IRLR 238, CA.

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