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## **EMPLOYMENT LAW NEWSLETTER**

**WINTER 2007/2008**

### **COMPENSATION LIMITS INCREASED**

The annual increase of compensation limits for Tribunal claims came into effect in cases where the effective date of termination is on or after 1<sup>st</sup> February 2008. Increases include a week's pay for basic awards and statutory redundancy payments rising to £330 and the maximum compensatory award for unfair dismissal rising to £63,000. Full details of all the relevant increases can be found in the Employment Rights (Increase of Limits) Order 2007 SI 2007/3570.

### **DAMAGES**

Even in cases of constructive dismissal, a Tribunal can only award losses that flow from an actual dismissal, and not from bullying behaviour even though the bullying led to the constructive dismissal: GAB Robins v Triggs [2008] (overruling the EAT's decision from November 2007).

### **MOBILITY CLAUSES**

In Home Office v Evans [2008] IRLR 59, the Court of Appeal upheld the legality of the employer's decision to invoke a mobility clause in order to avoid redundancy dismissals.

## **DDP**

In a redundancy dismissal, there is not an automatic breach of the statutory DDP where an employee is not given their mark; what is required is that the employee must have sufficient information so that he may be understood and so that the employee may have a reasonable opportunity to challenge, correct or supplement the information: Davies v Farnborough College of Technology [2008] IRLR 14. The EAT also held that where insufficient information is given for a Step 2 meeting, the statutory breach cannot be cured at an appeal hearing to prevent a finding of automatically unfair dismissal.

## **DISCIPLINARY WARNINGS**

There is no absolute rule that an employer cannot take into account an expired disciplinary warning when deciding whether to dismiss: Airbus UK Ltd v MG Webb [2008] EWCA Civ 49 Court of Appeal

## **TIME LIMITS**

The general time limit for bringing a claim where a grievance has been raised is six months less one day, and not six months: Joshi v Manchester City Council [2008] UKEAT/0235/07, overruling Singh t/a Rainbow International v Taylor.

## **AGE DISCRIMINATION**

National legislation that permits the imposition of compulsory retirement at age 65 is not prohibited by the Framework Employment Equality Directive if the provision is objectively and reasonably justified by a legitimate aim and the means used to achieve that aim do not appear inappropriate and unnecessary for the purpose. In the present case the aim was the regulation of the national labour market and, in particular, for the purpose of limiting unemployment. This was a legitimate aim: Palacios de la Villa v Cortefiel Servicios SA [2007] IRLR 989, ECJ.

Judge Meeran, President of the Employment Tribunals, has issued a practice direction that all claims raising the same issue as the *Heyday* claim regarding regulation 30 should be stayed pending the decision of the ECJ. This direction will be reviewed after the Court of Appeal's judgment in Johns: Johns v Solent SD Ltd [2008] IRLR 88.

## **DISABILITY DISCRIMINATION**

Agreeing with the approach in Project Management Institute v Latif [2007] IRLR 579 EAT, the EAT held that the tribunal must identify “with some particularity” what step an employer has failed to have taken in order for a disabled claimant to be able to succeed on a claim that there has been a breach of the duty of reasonable adjustment. The degree of particularity required is a matter of fact: HM Prison Service v Johnson [2007] IRLR 951, EAT.

## **SEXUAL ORIENTATION DISCRIMINATION**

The 2003 Regulations do not prohibit homophobic banter against a man who is not gay, not perceived / assumed to be gay by his fellow workers and who accepts they do not believe him to be gay: English v Thomas Sanderson Blinds Ltd [2008] EAT/0556/07. The Regulations do not properly implement the Directive. Permission to appeal to the Court of Appeal has been given.

## **PROTECTION FROM HARASSMENT ACT**

The test for determining whether harassment had occurred under the 1997 Act is whether the gravity of the conduct was sufficient to sustain criminal liability under s.1 of the Act: Conn v Sunderland City Council [2007], CA.

## **TRANSFER OF UNDERTAKINGS**

Reg. 8 of the 2006 Regulations is designed to facilitate transfers in circumstances where the undertaking is insolvent. Different rules apply reducing or entirely removing transferee liability according to whether or not the insolvency proceedings are initiated for the purpose of liquidation. This protection, however, is not available if the transfer occurred prior to the commencement of the insolvency proceedings: S of S for Trade and Industry v Slater [2007] IRLR 928, EAT.

An employee is not obligated to continue his employment with a transferee if he did not wish to do so, and a purposive construction should be given to regulation 4(7) of the TUPE Regulations. The objection need not be made prior to the transfer if the employee did not know the identity of the transferee at the date of the transfer: New ISG Ltd v Vernon [2007] Times Law Reports 12 Dec 2007.

## **EQUAL PAY**

Section 1(2) of the Equal Pay Act should be given a purposive construction, and a woman may base an equal pay claim with a man in a lower grade but who in fact received more pay: Redcar and Cleveland Vorough Council v Bainbridge and others [2007], CA.

In Cumbria County Council v Dow (No.1) [2008] IRLR 91, the EAT has held that an employer needs to provide convincing evidence for its assertion of the material factor defence, and in particular that there is a justification for the whole amount of the differential. There are effectively two defences for an employer if a pay practice has a disparate effect on women, firstly to show that the discrimination is not sex tainted; and if it cannot do that, the employer can justify the differential.

## **LIQUIDATION**

Protective awards under s.189 of the Trade Union and Labour Relations (Consolidation) Act 1996 made by a Tribunal to former employees did not constitute debts provable in the liquidation of the company where they were made after the date of the liquidation: Day v Haine and another [2007] Times Law Reports 28 Dec 2007.

## **FAST TRACK TRIBUNAL CLAIMS**

The Government has announced in Hansard its intention to establish a fast track system for dealing with simple monetary claims. The system will involve five jurisdictions where claims potentially raise straightforward issues and therefore could be determined without the need for a tribunal hearing. These jurisdictions are unlawful deductions from wages, breach of contract, redundancy pay, holiday pay and the national minimum wage, so long as they are not combined with other claims outside the list.

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 Employment Law Clerk, Nick Bryant, on 020 7404 7000 or email [clerks@thomasmore.co.uk](mailto:clerks@thomasmore.co.uk)

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