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## EMPLOYMENT LAW NEWSLETTER

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**DISABILITY DISCRIMINATION** The general comparative exercise required in a disability discrimination reasonable adjustments claim differs from the like-for-like comparison required in disability-related discrimination claims. The Claimant does not, therefore, have to establish that someone who does not have a disability but whose circumstances were otherwise the same would have been treated differently. Further, a tribunal only has to identify non-disabled comparators in reasonable adjustment cases where it is appropriate to do. It may not be necessary to do so in all cases. Further, a dismissal can in itself be an unlawful act of discrimination by reason of a failure to make reasonable adjustments: Fareham College Corporation v Walters [2009] IRLR 991, EAT. The Disability Discrimination Act prohibits discrimination against an employee on the grounds that they care for a disabled person. Section 3A(5) can be read to include the following: "A person also directly discriminates against a person if he treats him less favourably than he treats or would treat another person by reason of the disability of another person.": EBR Attridge Law LLP v Coleman (No. 2) [2010] IRLR 10, EAT.

**HOLIDAY PAY/SICKNESS ABSENCE** Workers may take their annual leave entitlement whilst absent on grounds of sickness. If a worker, however, does not wish to take annual leave during a period of sick leave, annual leave must be granted to him for a different period. Further, where necessary the worker must be allowed to carry over his or her holiday entitlement into a new leave year (this places the prohibition in the Working

Time Regulations on carrying over more than eight days of statutory holiday entitlement into a new leave year in breach of EU law requirements): Pereda v Madrid Movilidad SA [2009] IRLR 959, ECJ.

**COMPENSATION** An employer who has been found to have unlawfully discriminated in dismissing an employee can be liable for losses resulting from the fact that the employee had been unlawfully stigmatised by potential future employers who were unwilling to employ him because he had taken legal action against the employer, even where the actions of the potential third party employers are unlawful: Chagger v Abbey National plc [2010] IRLR 47, CA. The *Vento* guidelines on compensation for injury to feelings have been increased by 20% to take account of inflation. The highest band is now £18,000 to £30,000; the middle band is now £6,000 to £18,000 and the lower band is now up to £6,000: Da'Bell v NSPCC [2010] IRLR 19, EAT. The *Norton Tool* principle (that an employee unfairly dismissed without notice is not required to give credit for any earnings during the notice period) does not apply in relation to earnings during what would have been the notice period of an employee who resigns and claims constructive dismissal: Stuart Peters Ltd v Bell [2009] IRLR, 941, EAT. Different principles of causation should not be applied to different elements of an unfairly dismissed employee's remuneration when assessing compensation: Aegon UK Corp Services Ltd v Roberts [2009] IRLR 1042, CA.

**TRANSFER OF UNDERTAKINGS** Regulation 13 of the TUPE Regulations requires transferors to provide information to the appropriate representatives of the employees prior to transfer. An employer, however, is not in breach of this information duty when it failed to provide the employees' union information on the transfer's legal implications for employees due to the fact that it had received incorrect advice from its lawyers that the transfer would not be a TUPE transfer. An employer does not have to warrant the legal accuracy of its opinion: Royal Mail Group Ltd v Communications Workers Union [2009] IRLR 969, CA.

**ESTIMATED DATE OF TERMINATION** The EDT in circumstances where an employer accepts by letter to the employee an employee's repudiatory breach of contract is the date on which the employee actually reads the letter: GISDA CYF v Barratt [2009] IRLR 933, CA,

**RELIGION/BELIEF DISCRIMINATION** A belief in man made climate change and the environment is capable of falling within the protection provided by the Employment Equality (Religion or Belief) Regulations 2003: Grainger plc v Nicholson [2010] 4, EAT.

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