employment law update

Changes to first aid training regime

New changes to the first aid training regime have been implemented. These changes do not include changes to employers' legal responsibilities to give training but merely apply to the guidance on first aid training. They are meant to try to make first aid training more flexible for employers.

The changes, effective, 1st October 2009, and they include:

- The replacement of the mandatory four day 'first aid at work' course to that of a mandatory three day 'first aid at work' course;
- A new option of a one day 'emergency first aid at work' course for smaller businesses;
- It will be strongly recommended that all employees trained in first aid go on an annual refresher course in order to review the basic skills and keep up to date with changes, yet this is not a mandatory requirement.
- The requirement of all employees trained in first aid to attend a two day course every three years in order to renew their certificate will be maintained.

Employers should note that any employee with a 'first aid at work' certificate would only have to take the new course when their current three year certificate expires. Also any training organisation currently approved by the HSE will be automatically approved for the new course changes.

www.employerslegalprotection.co.uk

Weekly Pay Limits

On October 1st 2009 the weekly pay limit used to calculate statutory redundancy money rose from £350 to £380. This increase will also apply to Employment Tribunal basic awards and compensation for non-compliance with flexible working procedures.

The weekly pay limit would usually be adjusted during February of each year, however, as this change has taken place so late in the year there will be no change in February 2010, and the next adjustment is set for February 2011.

www.employerslegalprotection.co.uk

ei

legal protection for employers

Our fixed fee packages are amongst the most cost effective ways on the market to avoid employment law penalties.
Included in the ei package are:-

- Preparation of employment contracts
- Unlimited access to our employment law helpline
- Dispute Resolution Service
- Representation at Employment Tribunals
- Employment Law bulletins

By signing up to ei – the fixed fee legal protection for employers – you can avoid costly penalties.

Also visit out website to see our redundancy package.

www.employerslegalprotection.co.uk

Without Prejudice Discussions

In *Oceanbulk Shipping & Trading SA v TMT Asia Ltd & Ors* the High Court has allowed "without prejudice" discussions to be used as admissible (acceptable) evidence to the same extent as it would be if it was not a without prejudice discussion. The judge added that the reason without prejudice discussions would usually inadmissible is due to public policy and is not an absolute rule. The Judge also stated that generally without prejudice negotiations that fail to result in a settlement are inadmissible as evidence in later litigation procedures. However, if they result in a settlement they can be admissible in subsequent litigation regarding the meaning and effect of the settlement.

www.employerslegalprotection.co.uk

Should you have any queries relating to the information that you have read in this update please do not hesitate to contact one of employment law specialists either by telephone or e-mail on the details shown below.

Slee Blackwell Solicitors
www.employerslegalprotection.co.uk e: employment@sleeblackwell.co.uk
31 Queen Street, Exeter T: 01392 423000
With offices at: Barnstaple, Bideford, Braunton & South Molton

employment law update

ei
legal protection for employe

Sickness when on Holiday

Employees will now get extra holiday if they fall ill on planned holiday leave. This decision was handed down in *Pereda v Madrid Movilidad* where the European Court of Justice held that a worker who is sick during previously planned leave is entitled to the holiday days missed. On their return to work, the employee will then have to request to take the leave missed at another time.

This judgement could be open to criticism as it allows an employees to gain extra holiday if they are ill during a period of holiday. This could lead to abuse from employees. However, the reasoning for this judgement is that an employee should have at least four weeks holiday a year and if they are sick during this holiday, then they should be entitled to take the missed holiday time. The logic is that being off sick would not offer a break or relaxation, which is the whole purpose of holiday leave.

www.employerslegalprotection.co.uk

Grievance Procedure no longer applies to claims for Redundancy, Holiday Pay & Unpaid Wages

In a recent case brought before the Employment Appeal Tribunal (EAT) the residing Judge has criticised grievance procedures and stated that they no longer apply to redundancy, holiday pay and unpaid wages. He criticised the procedure as having been confusing and contradictory and that the initial reason for the procedure was meant to reduce the amount of cases heard in the employment tribunal. It was hoped that employers and their employees would resolve their differences with the use of Dispute Resolution, yet its implementation has given rise to more litigation, often about obscure points of law that seem irrelevant and unnecessary.

In *Allen & Others v Murdoch* three employees at a pub tried to bring a claim to the tribunal for unfair dismissal, redundancy payments, unpaid wages, and holiday pay. Their claim for unfair dismissal was allowed by the ET as grievance rules do not apply to unfair dismissal. However, their other claims failed because the ET held they could not accept jurisdiction of the case as the proper grievance procedures had not been followed, in that they had not waited 28 days after sending their grievance letter before they tried to bring their claims forward.

The employees appealed to the EAT and were successful. The presiding Judge held that the grievance procedures did not apply to any of their claims, and therefore, the employees won their appeal. The judge cited the Employment Act 2002 (Dispute Resolution) Regulations 2004 and the Employment Tribunals Extension of Jurisdiction Order 1944 when giving the reasoning for his decision and held that:

- In regards to redundancy payments the grievance procedures did not apply as redundancy payments are only relevant where there has been a dismissal, and, considering that grievance procedures do not apply to unfair dismissals then they should not apply to redundancy payments;
- In regards to holiday pay similar reasoning was given to that of redundancy payments as disputes for holiday pay can only come from a dismissal so if the procedures do not apply to unfair dismissals then they should not be applicable to holiday pay;
- In regards to unpaid wages, the judge held that these were claimed as a breach of contract and breach of contract claims do not have to follow grievance procedures.

Saying this, however, it is best for employees to raise a grievance and for employers to deal with them as quickly and as thoroughly as possible to avoid having to attend the employment tribunal and becoming bogged down in lengthy employment litigation.

ww.employerslegalprotection.co.uk

Slee Blackwell Solicitors
www.employerslegalprotection.co.uk e: employment@sleeblackwell.co.uk
31 Queen Street, Exeter T: 01392 423000
With offices at: Barnstaple, Bideford, Braunton & South Molton

employment law update

ei
legal protection for employe

Redundancy Pools – How much choice do you have?

The Employment Tribunal's decision in *Lomond Motors Ltd v Clark* has been reversed by the Employment Appeal Tribunal. The original hearing decided that the employer's redundancy pool was inappropriate, and subsequently, the employee's dismissal was unfair. This was due to accountants from only two out of four garages in the employers business being considered. The Employment Appeal Tribunal reversed this and held that the employer had a choice of reasonable responses, and therefore, the two garages where the accountants were contracted were considered separate premises from the other two.

What does this mean for employers? It will now allow employers to have more choice when deciding who to consider for redundancy. Providing employers choose only certain people for a reasonable reason, such as in this case where the business premises in which the employee worked were considered separate garages from the other two. This judgement however does not mean employers can simply pick and choose who they wish to make redundant. If employees are chosen for redundancy unfairly against others then a tribunal hearing could follow.

ww.employerslegalprotection.co.uk

Unofficial Strike Action

The European Appeal Tribunal has confirmed recently in *Sandhu and Ors v Gate Gourmet London LTD* that dismissal during an unofficial strike is not unfair. A strike is considered unofficial if it is not planned and carried out in conjunction with a trade union. If an employee is dismissed for taking part in an unofficial strike they are subject to ordinary unfair dismissal rules. This however, would also mean that the dismissal would be subject to the ACAS Code of Conduct in relation to disciplinary and dismissal procedures and it would mean that an employee would be eligible to bring a claim for unfair dismissal in the Employment Tribunal in the event that the employer failed to follow them. If you are considering dismissing an employee for any reason, correct disciplinary and dismissal procedures should be followed. Alternatively call our dedicated helpline service to obtain further guidance.

ww.employerslegalprotection.co.uk

Compensation for Unfair Dismissal

Employees are entitled to compensation for any loss suffered due to unfair dismissal. There is a problem, however, in how someone's loss of earnings should be assessed if they find another job soon after.

Norton Tool Co LTD v Tewson held that if an employee has not been given notice or pay in lieu of notice, yet they find another job before the notice period they should have received ends, then they should still be given compensation for the entirety of their notice period, their earning from their new employment notwithstanding. This case however, only deals with a claim where there is an actual dismissal from the employer, not for instance where an employee has resigned and claimed constructive dismissal. The Court of appeal held that the rule in *Norton Tool* did not apply in these circumstances, and therefore, a person whose claim is as a result of resignation due to poor treatment , will have their earnings during their notice period taken into account when deciding on compensation. The Court of Appeal's decision differs from that of the Employment Appeal Tribunal which thought the rule given in *Norton Tool* should apply in both circumstances.

ww.employerslegalprotection.co.uk

Is an Investigation Necessary?

In *Kelly v Manor Oak* an employee at a garage passed a car through an MOT when it should have failed. At the Employment Tribunal, the employee took responsibility for the mistake; however, the tribunal thought the dismissal was unfair as they thought the employer's belief of the employee's guilt was not based on reasonable grounds. The Employment Appeal Tribunal allowed the employer's appeal and held that once the employee made the admission the employer did not need to take their investigations further.

Although this means that once an employee has admitted to the act of which they have been accused, no investigation need be carried out. It is still important for employers to investigate the matter so that they can make a well-informed judgment on what has taken place. This is so as the employer still has the obligation to carry out a fair and objective investigation to comply with the ACAS Code of Conduct.

ww.employerslegalprotection.co.uk

Slee Blackwell Solicitors
www.employerslegalprotection.co.uk e: employment@sleeblackwell.co.uk
31 Queen Street, Exeter T: 01392 423000
With offices at: Barnstaple, Bideford, Braunton & South Molton

employment law update

ei
legal protection for employe

Minimum Wage and Tips

On October 1st 2009 the National Minimum Wage rose to £5.80 for workers aged 22 or over, to £4.88 to workers aged between 18 and 21, and to £3.57 for workers aged between 16 and 17 years old.

On this same date it was also made illegal for employers to use tips, service charges, or gratuities distributed to employees through the payroll system to top up an employees wage in order to meet the national minimum wage. Any employer found to be doing should expect to find employment tribunals not far behind!

ww.employerslegalprotection.co.uk

Volunteers

X v Mid-Sussex CAB is authority for the proposition that 'volunteers' (such as unpaid charity or CAB workers) are not protected by the Disability Discrimination Act or the EU Framework Directive.

The Claimant was a volunteer part time advisor at the CAB. She had no contract. She left in circumstances which she alleged amounted to discrimination on grounds of her disability. She argued she was protected by the EU Directive and that the DDA should be 'read down' to provide that protection.

Burton J, in the EAT, held that her claim should be struck out. He held "employment" in the Directive requires a material contract between the parties. He observed there was no jurisprudence to suggest that "occupation" meant unpaid employment; also, that the Directive offered protection only in relation to "access" to occupation. He held the Directive was not intended to protect volunteers in the Claimant's position and declined to make a reference to the ECJ on the point.

ww.employerslegalprotection.co.uk

IMPORTANT NOTICE

These notes are for guidance purposes only. We believe the contents to be correct but it should not be taken as accurate or full or to apply to specific situations, without first referring to us. Please feel free to call the office and speak to one of our employment team who will be willing to assist with any queries you may have.

Default Retirement Age

We have advised in previous updates that Age concern has lost a court case commonly referred to as the Heyday Appeal which challenged the Employment Equality (Age) Regulations 2006. Age concern were challenging the ability of an employer to mandatorily retire an employee when they reach the default retirement age, as they argued this breached the European Equal Treatment Framework Directive. During the case various questions were referred to the European Court of Justice who ruled that the question whether or not the default retirement age is lawful depends on whether it can be justified as a proportionate means of achieving a legitimate aim. The case ended on the 25th of September and the High Court ruled that the default retirement age of 65 was lawful and that the requirement given by the European Court of Justice was satisfied.

This judgment was made in the knowledge that in 2010 there will be a government review regarding the default retirement age almost certainly increasing it, so we can all look forward to working a few more years.

ww.employerslegalprotection.co.uk

Maternity and Paternity Leave

The government is planning to introduce new laws on maternity and paternity leave. This will be subject to the results of a consultation on a proposed bill in the House of Commons, which is currently underway. Saying this however, it has been widely suggested that the proposed new laws will come into effect by April 2010 and have effect on parents of children due on or after April 3rd 2011.

Under the proposed legislation mothers would be able to transfer all or part of the last 26 weeks of their Additional Maternity Leave (AML) to the father of the child, provided that the leave is taken during the mother's 39 week pay period. This Additional Paternity Leave (APL) would be paid at the same rate as statutory maternity leave which is currently at £123.06 per week, or 90% of the mother's average gross weekly earnings. Parents will be able to self-certify their entitlement to this leave, although, employers could be given the right to carry out checks to stop any possible abuse.

ww.employerslegalprotection.co.uk

Slee Blackwell Solicitors
www.employerslegalprotection.co.uk e: employment@sleeblackwell.co.uk
31 Queen Street, Exeter T: 01392 423000
With offices at: Barnstaple, Bideford, Braunton & South Molton