

National minimum wage increases for October 2013

New national minimum wage rates will take effect on 1 October 2013. The new rates are :

- The standard adult rate (for workers aged 21 and over) will increase to £6.31 an hour (up 12p from £6.19)
- The development rate (for workers aged between 18 and 20) will increase to £5.03 an hour (up 5p from £4.98).
- The young workers' rate (for workers aged under 18 but above the compulsory school age who are not apprentices) will increase to £3.72 an hour (up 4p from £3.68)
- The rate for apprentices will increase to £2.68 an hour (up 4p from £2.65)
- The accommodation offset will increase to £4.91 an hour (up 9p from £4.82)



ECJ clarifies scope of 'disability' and 'reasonable accommodation'

The European Court of Justice has delivered a judgment on the scope of 'disability' and 'reasonable accommodation.' The Court held that the concept of disability does not mean that a person is completely excluded from work. A person who can work to a limited extent, or who is fit for work albeit only part-time, can still be classed as 'disabled.' Neither is disability limited to congenital conditions or those caused by accidents. A limitation resulting from a temporary illness that hinders full and effective participation in professional life may suffice, if its effects are sufficiently long-term.

The Court also held that the concept of reasonable accommodation in Article 5 of the European Equality Directive refers to eliminating barriers that hinder the full and effective participation of disabled persons in work on an equal basis with others. A reduction in working hours may be a reasonable accommodation, if it enables the worker to remain in employment. It is for local courts to decide whether the burden on the employer is disproportionate, taking account of any costs entailed, and the employer's size and financial resources.

Knowledge of disability

The Employment Appeals Tribunal has upheld an Employment Tribunal's decision to strike out a claim of direct disability discrimination where there was nothing to indicate that those who interviewed the employee had any knowledge, or could be imputed with knowledge of his disability.



Confidentiality Agreements

The Court of Appeal has interpreted a confidentiality deed which provided that the recipient of confidential information could disclose the information to third parties, if they procured that the third parties were bound by similar obligations of non-disclosure and non-circumvention to those binding the original recipient. The recipient was also responsible for any unauthorised disclosure, whether received by it or by any third party. This is a rare example of a confidentiality agreement being interpreted by a court. It is a reminder that a confidentiality agreement will be construed in accordance with the same principles as any other agreement.



Redundancy situation existed even though replacement for under-performing employee had already been recruited

The Employment Appeals Tribunal (EAT) has upheld a Tribunal's decision that an employee was dismissed for redundancy, where the employee claimant had been performing poorly in his job, which led his employer to recruit another person to troubleshoot various problems at work. The troubleshooter was kept on and the employer then dismissed the claimant for redundancy on the basis that there were two people doing one person's job. The Tribunal concluded that the employee had been dismissed for redundancy, but his dismissal was unfair for procedural reasons and his compensation was reduced by 100%.



The Tribunal's conclusion is unusual, in view of the fact that the diminished requirement for the role appears to have been caused entirely by the employer's decision to recruit a more competent employee to do the same job.

Redundancy the principal and real reason for dismissal



The EAT has held that it was not perverse for a Tribunal to find that redundancy was the principal and real reason for dismissal where there were other factors at play. The fact that the employer took a poor view of the employee's conduct and capability, and had hostile motives towards him did not negate the fact that redundancy was the reason for dismissal. Although there was more than one potential reason for dismissal, the Tribunal was entitled to find that, as a matter of causation, redundancy was the reason for dismissal.

The fact that there is a redundancy situation will not necessarily mean that the reason for dismissal is redundancy; that is a question of causation, to be decided on the evidence. Where there is potentially more than one reason for dismissal, determining the principal reason for dismissal may be a finely balanced judgment.

No SOSR where working relationship had broken down

The EAT has held that an employer who dismissed a senior employee following a dispute over a profit share and a failure to agree on the terms of employment could not rely on 'some other substantial reason' to justify the dismissal. Although the situation had become contentious, with the employee claiming in correspondence to have lost all trust and confidence in the employer and threatening a constructive dismissal claim, neither side acted as if the relationship had broken down. This was really a power struggle over pay and contractual terms. Although a breakdown in relations can amount to 'some other substantial reason' it did not in this case. The EAT also upheld the tribunal's decision that the profit share could be claimed under the unlawful deduction from wages jurisdiction.



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