Employment Law Newsletter

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Redundancy: assessing whether refusal of suitable alternative employment is reasonable

When an employee is offered suitable alternative employment during a redundancy process, is it reasonable for the employee to refuse such an offer?

The Court of Appeal said that the question of whether refusing suitable alternative employment was reasonable depended on the particular situation of the employee in question. **(*Devon Primary Care Trust v Readman [2013]*)**. The Court said the main point which the Tribunal in this case failed to determine was whether, having spent 30 years working in the community as a nurse, it was reasonable for the employee to refuse suitable alternative work as a nurse in a hospital. The Tribunal also failed to address the relevance of the employee's intention to emigrate after her redundancy, and whether her preference for taking redundancy benefits had clouded her assessment of the alternative job offer. As the Tribunal failed to address these issues, it was held to be reasonable for the employee to refuse the offer of what seemed to be suitable alternative employment.

A dismissal can be fair even if the employer is ignorant or mistaken as to the law

To avoid redundancies, reduce labour costs and offer more competitive tenders, an employer gave employees 12 weeks' notice that they would no longer receive a guaranteed weekly salary and instead be engaged on zero-hours contracts. The employer would no longer be obliged to provide them with work, and if no work for two months, they would be given their P45's. The employees resigned and claimed constructive dismissal. The employer had not appreciated the effect of its measures on the employment status of the employees and not consulted them on that issue.

The Appeals Tribunal said that an employer's ignorance, or mistaken understanding, of the effect of the law may mean that a dismissal is fair, but this is not automatically the case. Each case will be assessed on its circumstances. **(*Docherty and another v SW Global Resourcing Ltd [2013]*)**

Failure to provide impartial grievance appeal process may breach implied term of trust and confidence

An employer's failure to provide an impartial grievance appeal process to allow an employee to appeal to a different manager than the one who had heard the original grievance, could amount to a breach of the implied term of trust and confidence and form the basis of an employee claiming compensation for constructive dismissal. **(*Blackburn v Aldi Stores Ltd).***

Whether it does will depend on the facts, including the size of the employer and the employer's ability to provide an independent senior manager. Such a breach may otherwise entitle an employee to resign and claim constructive dismissal.

Pay in lieu of statutory holiday on termination must reflect normal pay

An Employment Tribunal has held that payments in lieu of untaken statutory holiday at the time employment is terminated, must be calculated to reflect normal pay. Here, the employee was employed under a zero hours contract which provided that on termination of employment she would be entitled to the sum of £1 in lieu of untaken holiday rather than at her normal rate of pay. The Employment Tribunal upheld the employee's claim.

Agricultural Wages Order

The terms and conditions for agricultural workers as defined by the Agricultural Wages Board (AWB) came to an end this October, which now gives growers or farmers more flexibility in worker's new contracts. The AWB had previously set the minimum wage and other terms and conditions for agricultural workers in England and Wales. New workers can now be offered far more flexible, and in many respects less generous terms and conditions, provided minimum statutory employment terms are complied with. Employers will have to comply with the National Minimum Wage rates. There is no obligation on employers to pay overtime at a higher rate and employers will only need to pay the national minimum of 28 days annual holiday (including bank holidays).

Use of Confidential Information

The Patents County Court has determined that an ex-employee and his new employer company were liable for the misuse of confidential information which belonged to the employee's former employer. The employee was liable because the confidential information he had taken was used by him, and his new employer was also liable (even though some breaches occurred before they employed him) because the employee was acting as agent of the new employer to further it's interests. As the employee could not be said to be acting on his own, the new employer could be held jointly liable. This case highlights that there is a considerable risk if new employees who used to work for a competitor are permitted to use confidential information belonging to their former employer. Employers need to make it clear to prospective employees that any such information should not be used by them either before they join the company or afterwards.

McCririck Case - Approaching the last furlong

Most of you may be aware that the 73 year old racing pundit has brought an action for age discrimination following his dismissal by his former employers, Channel 4.

In order to prove direct age discrimination, McCririck had to establish a basic case by demonstrating that there were real or hypothetical comparators of a younger age group who would have retained their employment in the same circumstances as those in which he was dismissed. Channel 4 then had to show that they did not treat him less favourably than such comparators.

Courtesy Mr Pics / Shutterstock.com

Judgment in the case has been reserved and a result may be expected by mid-November, so we will have to see whether the odds are in McCririck's favour.

Place your bets now !