

Issue 2 2009

Holiday Pay accrues whilst on sick leave

The recent judgment in the case of HMRC -v- Stringer and others, held that claims to enforce entitlement to holiday pay under the Working Time Regulations 1998 can be pursued under the Employment Rights Act 1996 as claims for unlawful deductions of wages.

A claim for unpaid holiday under regulations 13 and 16 of the Working Time Regulations or a claim for payment on termination under regulation 14 can be pursued as unauthorised deduction claims under the Employment Rights Act 1996 as well as under the Working Time Regulations.

The important practical effect is that a worker can take advantage of the more generous time limits which apply to unlawful deduction claims. A claim for unlawful deduction from wages can be brought within three months of the last in a series of deductions, so allowing a claim to go back more than three months, if the underpayments form part of a series of payments.

Increase in Statutory Redundancy Pay

The Government has confirmed that the increase in the weekly limit used to calculate statutory redundancy pay from £350 to £380, will take place on 1st October 2009. There will, however, be no further increase until February 2011.

For an employee aged 61 or above, for example, (who has been employed for 20 or more years) the maximum statutory redundancy payment will rise from £10,500 to £11,400.

The limit on a week's pay also applies when calculating other types of compensation award. It is anticipated that the increased amount will apply to other types of payments as well.

Minimum Wage

The standard rate for the National Minimum Wage will increase from the current £5.73 to £5.80 per hour from 1st October 2009. The rate for 18-21 year olds will increase to £4.83 and for 16-17 year olds to £3.57. Those aged 21 will be entitled to the full NMW as from October 2010.

Enforcement of Tribunal Awards made easier

Workers who win Employment Tribunal awards sometimes don't get paid by the end of the 42 day period allowed before interest starts to accrue. From 1st April 2009 it has been made easier for successful claimants to recover money awarded to them by Tribunals, as the requirement that an award had to be registered in the County Court or High Court before it could be enforced, has been removed. The costs of enforcing an award will be recoverable from the Respondent Employer with limited cost liability for the Employee.

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TUPE and Professional Services

A revised version of the Transfer of Undertakings (Protection of Employment) Regulations ("TUPE") came into force in April 2006.

One of the main changes was that there is now express provision to cover "service provision changes" such as the outsourcing by an employer of services previously provided in-house. The TUPE regulations now include provisions which expressly protect the employment of staff affected by the transfer.

The provision of professional services was not excluded from the "service provision change" provisions. In a recent case, a Tribunal has decided that two employees from a client's previous law firm were sufficiently involved with the client's work for their employment contracts to be automatically transferred by TUPE to their new firm to which the client had transferred its business. As the new firm did not take on those employees they were entitled to compensation for unfair dismissal and for their employer's failure to consult as required by the TUPE regulations.

Part Time Workers

In general terms a part-time worker has the right "not to be treated by his employer less favourably than the employer treats a comparable full-time worker "...if the treatment is on the ground that the worker is a part-timer worker" (the Part Time Workers Regulations 2000).

The EAT has now decided that, generally, it is not permissible to use a hypothetical full time worker as the comparator (two exceptions



occur when a full time worker switches to part-time work and/or vice-versa), if there is no comparable full-time worker.

The EAT has also ruled that Part-time work must be the effecting and predominant cause of the less favourable treatment complained of. It does not have to be the sole reason but the main reason for the less favourable treatment.

Sub-contractor can be an employee !

A Tribunal has ruled in the case of Tilson -v- Alstrom Transport, that a sub-contractor can be designated as an Employee. Despite the sub-contractor paying his own tax and National Insurance Contributions, the way in which his work was structured and the manner in which he worked and the tasks he performed for his company client were the real indicators of his employment status. The sub-contractor was therefore able to bring a claim for unfair dismissal against the company as an Employee.

This should send warning bells to those who engage contractors and sub-contractors, to ensure that they have documentation in place to deal with the status of such persons and that the contract or agreement is up to date and covers this point.

For further information contact Andrew Egan on 0800 180 4835

Age discrimination complaints!



Employers should watch out for such claims, including serial litigants, as they are on the rise in the current economic climate.

In particular, a woman netted £100,000 by making 22 claims of ageism against separate companies, targeting accountancy firms, applying for jobs aimed at recently qualified accountants and then claiming age discrimination when she didn't get the jobs at nearly 50 years of age. 12 companies had made out of court settlements with the lady!

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