



Employment Law Newsletter

To the third edition of our Employment Newsletter - an ongoing monthly service to clients, referrers and supporters of our firm. We hope this information is of interest and assistance to you and invite you to call our Employment experts with any queries you might have. Please note it is not formal legal advice and as such should not be acted on without seeking legal advice based on your particular set of circumstances.

No qualifying period for Unfair Dismissal (when dismissed for asserting a statutory right)

Employers should not forget that employees do not need one year's service in order to claim unfair dismissal if they have been dismissed for asserting a statutory right (i.e. a right afforded by employment legislation, rather than just a contractual right).

In the case of *McLean –v- Rainbow Loans Limited* Mr McLean was a mortgage advisor who claimed that he was working 55-60 a week for his employer. He was asked to increase his hours by his employer but he refused to do so on the basis that he was already working long hours. As a consequence he was dismissed. Mr McLean brought a claim for unfair dismissal even though he had less than one year's service.

Mr McLean was dismissed when he asserted his statutory rights not to agree to work in excess of 48 hours. The EAT held that his dismissal was not only automatically unfair (so the employer is not able to try to justify its position) because the dismissal related to him asserting his statutory rights, but also that he did not need any period of service in order to qualify to bring a claim.

There are a number of exceptions to the rule that employees cannot claim unfair dismissal in the first year of their employment. Employers should check before dismissing an employee thinking they are safe from an unfair dismissal claim.

Dismissal for incapability can be fair even if the incapability results from the employment.

The Royal Bank of Scotland had won an appeal against an Employment Tribunal decision that it unfairly dismissed a long serving employee (of some 20 years standing) who took sick leave because of a stress-related illness. The proper approach is to decide whether dismissal was or was not within the range of reasonable responses open to the employer in all the circumstances - which included its responsibility for the employees incapability.

New Tribunal Compensation Limits for 2007

New compensation limits for Tribunal claims will take effect where the "appropriate date" (*for example the date of dismissal*) is on or after 1st February 2007. There is an increase from £58,400 to £60,600 in the maximum an Employment Tribunal can award as a "compensatory award", for example in unfair dismissal cases. There is also an increase from £290 to £310 in the maximum amount of "a week's pay" when calculating the basic award of compensation for unfair dismissal and/or statutory redundancy pay.

Grievance Procedures and Time Limits

The October 2004 statutory dispute resolution procedures appear to have created as many problems as they intended to solve. A dismissed employee filed a disability discrimination claim with an Employment Tribunal after the normal time limit had expired. He argued that as he had started a statutory grievance procedure under the Employment Act 2002 (Dispute Resolution) Regulations 2004 it followed that time was automatically extended by 3 months in accordance with those regulations and that his claim was thus presented in time. When the employer pointed out that the statutory grievance procedure did not apply on dismissal (other than in constructive dismissal cases) the employee argued that the grievance he had raised was concerned with the way in which his appeal against dismissal had been handled and was not a grievance that he had been dismissed. The Employment Tribunal and on appeal the EAT gave short shrift to this argument (although on the particular facts they decided it was just and equitable to allow the employee an extension of time under the normal rules which apply in discrimination cases).

Regulation of Employment law Advisers

Under current rules anyone can give employment law advice and anyone can represent a party at an Employment Tribunal hearing. In 2007 under proposed rules it will be a criminal offence for anyone to provide such services unless they are registered with and authorised by a Regulator appointed by the Secretary of State or are exempted. Professional indemnity insurance will be a requirement. Practising solicitors, barristers and legal executives are exempted. The rules are not restricted to employment law matters (in particular they also cover personal injury claims) but the government has said that employment tribunal claims, and companies offering to represent parties in employment tribunal cases, will be amongst the first to be regulated.

Compensation for Loss of Future Earnings on unfair dismissal

If an employee is unfairly dismissed an important element of the compensation due to him is likely to be his loss of future earnings. The Court of Appeal has confirmed that it is right and proper, and even obligatory, for an Employment Tribunal when carrying out its statutory duty to assess what is a just and equitable award for loss of future earnings to make predictions based on the evidence, even if that "may involve speculation".

Unfair Contract Terms and employees

The Unfair Contract Terms Act 1977 was designed to protect consumers from unfair contract terms. When it applies an unfair contract term is void. In November 2006 the Court of Appeal ruled that only in very limited circumstances can an employee claim that the 1977 Act makes void a term in his employment contract. It is now clear that an employee does not deal with an employer as a consumer and therefore the Unfair Contract Terms Act 1977 does not apply to his employment contract.

Consultation on Redundancy

Since 1st March 1996 employers have been under a statutory duty to consult "appropriate representatives" of employees about impending redundancies if at least 20 employees are being dismissed at one establishment within a 90 day period. Failure to do so can result in an Employment Tribunal making what is called a "protective award" in favour of each of the redundant employees, up to 90 days' pay each. In October 2006 the TGWU won a protective award in favour of redundant employees in respect of whom it was the recognised trade union. The question then arose as to whether the award was only for the benefit of those in respect of whom the TGWU was recognised as their trade union or whether others could benefit. The EAT has decided that on a proper interpretation of the 1992 Trade Union and Labour Relations (Consolidation) Act only those in respect of whom the TGWU was the recognised trade union could benefit and that the others should have made separate claims.

Disclaimer

The materials contained in this newsletter are provided for general information purposes only and do not constitute legal or other professional advice. We accept no responsibility for loss which may arise from reliance in information contained in this newsletter.



**We wish you a merry Christmas and a happy New Year from the
Employment team at Charles Lucas & Marshall**