

EMPLOYMENT LAW HEADLINES – FEBRUARY 2010

LEGISLATIVE DEVELOPMENTS

Compensation Limits

The maximum compensatory award for unfair dismissal will decrease to £65,300 from 1 February 2010. A week's pay will remain at £380. The maximum compensatory award has decreased from £66,200 to reflect a decrease in the retail prices index.

Financial Services Bill

It is expected that this Bill will be passed before the General Election. If passed, the Financial Services Authority will be able to regulate remuneration in the financial sector, including prohibiting specified types of remuneration, both in relation to existing and future contracts.

Employment Tribunals (Constitutions and Rules of Procedure) Amendment Regulations 2010

For claims made on or after 6 April 2010 Tribunals will have the power to pass on details of whistle blowing claims to the "relevant regulator". The parties will be told by the Tribunal if a relevant authority has been contacted and whether a copy of the claim has been disclosed.

CASE LAW DEVELOPMENTS

Religious Discrimination

The Employment Appeal Tribunal (EAT) has found that a philosophical belief (in this case the need to cut carbon emissions) is capable of being protected under the religious discrimination legislation. To qualify, the belief must be genuinely held and correspond to the lifestyle led by the holder of the belief. This does not open the floodgates to "extravagant" claims based on things like a devotional belief to the fortunes of a particular football club, but does illustrate what can amount to a philosophical belief. [*Grainger plc v Nicholson*]

Pregnancy: Risk Assessment

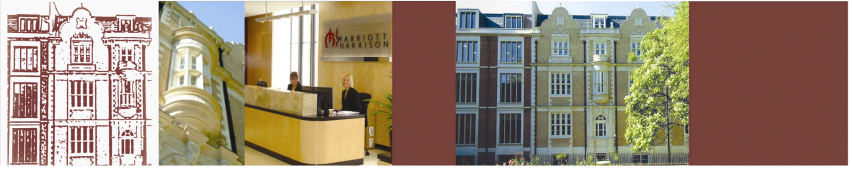
The EAT has held that unless the work of a pregnant employee involves risk to her health and safety, there is no obligation to carry out a risk assessment. Nevertheless, employers would be well advised to give thought to whether a risk assessment is appropriate in individual cases. [*L O'Neill v Buckinghamshire County Council*]

IVF Treatment

The EAT has recently confirmed that women undergoing IVF treatment are only protected under the sex discrimination legislation in the advanced stages of such treatment. [*Sahota v Home Office*]

Overseas Employment

The EAT has recently decided that Hong Kong based cabin crew employed on Hong Kong to London flights by British Airways were covered by the Race Relations legislation. At the end of each flight they had a debriefing session, performed duties on disembarkation, had stand by time, had duties prior to take off and undertook training in the UK. They were therefore "working" in the UK. [*British Airways v Mak*]



Age Discrimination

The European Court of Justice (ECJ) has decided that the Equal Treatment Directive did not preclude a German firefighting service from imposing a maximum recruitment age of 30 in view of the physically demanding nature of the job and the need to obtain the requisite level of experience over a range of jobs [*Wolf v Stradt Frankfurt am Main*]. The ECJ has also held that a legal maximum age for German dentists of 68 was permissible as an appropriate means of managing job opportunities. [*Petersen v Bevunfungsausschus*]

Failure of a Director to Report Fraud

The Court of Appeal (CA) has held that a company was entitled summarily to dismiss a Finance Director who had failed to comply with clear and explicit instructions to report all corporate and local risks, with the result that a fraud involving a supplier had not been reported. Such conduct amounted to a repudiation of his contract. [*Dunn v AHA Ltd*]

Representation at Internal Hearings

The CA has decided that the European Convention on Human Rights requires employees to be given an opportunity to be legally represented at internal hearings where the outcome could determine whether the employee is entitled to practise in a profession. Although in most cases the Courts have been keen to discourage legal representatives from appearing at internal hearings there may be circumstances, such as in this case, or where other related proceedings are pending, for such representation to be allowed. [*G v X School*]

Loss of Statutory Leave

The EAT has held that the statutory right to paid holiday under the Working Time Regulations is subject to reasonable notice provisions which may have been imposed by the employer. Thus an employer was entitled to refuse the request of an employee who wanted to take all of his leave towards the end of the leave year, which did not fit with the staffing patterns of the business. It also followed that such leave would be lost. It is prudent to include in contracts provisions as to the maximum amount of holiday an employee can take at any one time and the period of notice to be given in advance of such leave and this case reinforces this view. [*Lyons v Mitre Security*]

Internet use at Work

The EAT has recently considered the interplay between employment and human rights legislation in the case of a school mentor who accessed and distributed pornography from her work computer, where there was no internet policy in place. Her argument that such dismissal breached her right to freedom of expression was rejected and the EAT held that the school had properly balanced her rights as against those of the children in its care. [*Henderson v London Borough of Hackney*]

If you require any further information on any of the developments referred to above or on employment law generally, please contact our Employment Partners, Katherine de Souza, Bob Cordran or Jill Andrew on 020 7209 2000 or send them an email: katherine.de.souza@marriotharrison.co.uk; bob.cordran@marriotharrison.co.uk and jill.andrew@marriotharrison.co.uk

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