EMPLOYMENT LAW NEWS

July 2004 Edition

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1. Written particulars of employment

Employers are required to provide every employee with a written statement of employment particulars and of particulars of changes in terms of employment. For several years there has been no penalty for failure to comply with this requirement. As from 1st October 2004 that will change. On that day Employment Act 2002 s.38 will come into force. Unless an employer can demonstrate exceptional circumstances, employees will be entitled to an award of between 2 and 4 weeks' pay (as defined) if their employer has failed to provide the required particulars, which as from 1st October 2004 can be in a written contract or letter of engagement. Various other provisions of the Employment Act 2002 also come into force on 1st October including removal of the small employer exemption from the requirement to notify employees about disciplinary rules.

2. Employment Tribunals Annual Report

The Annual Report of the Employment Tribunals Service for the year to 31st March 2004 was published on 20th July. The statistical part shows that there were some 115,000 tribunal claims in the year. This puts in perspective, and emphasises the enormous potential importance of, the Disciplinary and Grievance procedures which will come into force on 1st October 2004. The DTI estimates that the new procedures will result in a reduction of between 34,000 and 37,000 in the number of tribunal claims, which can be seen to be a very large percentage of last year's total. I am not so optimistic. In this context, it is worth noting that a new version of the ACAS Code of Practice on Disciplinary and Grievance Procedures was placed before Parliament on 17th June to come into effect on 1st October 2004.

3. Compensation for unfair dismissal

On 15th July it was finally established, by the House of Lords, that in unfair dismissal cases employment tribunals do **not** have power to award financial compensation for non-financial "loss" *(e.g. for injury to feelings resulting from stress).* This may be bad news for employees but note that the ruling only applies in unfair dismissal cases and that there is specific provision by Act of Parliament for tribunals to be able to award compensation for injury to feelings in discrimination cases.

In two related judgments on the same day, 15th July, the House of Lords also held that there are some very limited circumstances in which it is permissible for an ex-employee to sue his ex-employer both for unfair dismissal in an employment tribunal

(where compensation is subject to a statutory cap) **and** for breach of contract in the County Court or High Court (where there is no cap on compensation). However this is only possible in those rare cases where the dismissal and the breach of contract complained of are entirely separate. An odd consequence is that, at least in cases where damages might be large, an employer considering suspending an employee could be well advised to dismiss him instead of suspending him thus ensuring that any legal action the employee might bring would have to be in the tribunal only. The result would be that the cap on unfair dismissal compensation would apply. This is a complicated subject and professional advice should be obtained.

4. Part time employees

Since 1st July 2000 part-time workers have been entitled to claim parity of treatment with comparable full time workers under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000. The first case on what is required to make a part time worker comparable with a full timer was decided by the Court of Appeal on 2nd July 2004. Retained firemen (i.e. part time firemen) claimed parity of employment terms with full time regular firefighters. It was held that retained firefighters are not engaged in the same or broadly similar work as full time firemen having regard, to their level of qualification, skills and experience. The case shows that part-time workers may have an uphill struggle in persuading an employment tribunal that they are entitled to the benefit of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations. Some quite subtle points are involved and professional advice should be taken in any relevant situation.

5. Information and Consultation Regulations

The EU National Information and Consultation Directive requires Britain to introduce laws requiring employers with more than 50 employees to "inform and consult" employees on management decisions affecting their future, such as decisions relating to changes in work organisation or contractual relations, including redundancies and job transfers. There is a 3-year phasing in period starting with larger employers (150 staff +) on 6th April 2005. The DTI have now (in July 2004) issued revised draft Information and Consultation of Employees Regulations setting out the detail. These regulations will affect larger employers as from 6th April 2005 and when fully in force will impose a considerable burden on all employers with more than 50 staff. They are extremely important. You will find some more detail on this Directive on the website www.morganrussell.co.uk article entitled The EU Employment Development under item 3, 'The National Information and Consultation Directive 2002'.

6. Constructive dismissal in discrimination cases

The Sex Discrimination Act specifically provides that "constructive dismissal" (i.e. resignation of an employee in response to serious improper conduct by the employer) counts as "dismissal". However there is no such provision in the Disability Discrimination Act or the Race Relations Act. Therefore there has been uncertainty as to the position in disability and race discrimination cases. The uncertainty has now been removed. The Court of Appeal ruled on 8th July 2004 that "constructive dismissal" does count as "dismissal" for purposes of the Disability Discrimination Act,

opening the door to relevant claims by ex-employees. It is thought that the same goes for the racial discrimination claims.

7. Faulty work equipment

A helicopter crashed and the employed pilot was killed. The wreckage was so complete that it was not possible to identify the cause of the accident. The pilot's widow brought a claim against the employer Helicopter Company. She won in the High Court on the basis that the Provision and Use of Work Equipment Regulations 1998 impose strict liability on an employer to keep work equipment in good repair. Given that the pilot was very experienced and that the accident was almost certainly not due to error on his part, the High Court decided that the fact that the helicopter had crashed must have meant that there was a breach of the regulations even though it was not possible to identify the mechanical fault, which had caused the accident. The employer was given leave to appeal to the Court of Appeal so the important question of just how far the Provision and Use of Work Equipment Regulations can be stretched may still not be finally resolved *(... watch this space)*

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