

EMPLOYMENT LAW UPDATE

2004 witnessed yet more fundamental changes in employment law so we thought it would be a good time to refresh your memory of the main points of the October Regulations before we face another deluge of regulation in 2005. On a brighter note we also highlight a couple of recent cases that actually went the way of the employer!

NEW REQUIREMENT FOR ALL EMPLOYERS TO HAVE BOTH GRIEVANCE AND DISCIPLINARY PROCEDURES

A recent survey found that one in three employers are not aware of new Regulations requiring them to have grievance and disciplinary procedures in place. Unless employers take action they will find themselves in the Employment Tribunal facing sizeable compensation claims.

The new rules on disciplinary, dismissal and grievance procedures came into effect on 1 October 2004 and necessitate changes in the way that most employers deal with such issues. All employers are required to have in place a procedure for disciplining or dismissing an employee.

Failure to comply with these procedures could mean that a dismissal will be automatically unfair and may result in an increase in the amount of compensation that an employer must pay by up to 50%.

Implementing a grievance procedure will also allow the employer the chance to resolve problems internally as employees are now required to lodge a grievance and wait 28 days before issuing a claim. If they fail to lodge a grievance they will be prevented from issuing a claim in the Employment Tribunal.

The new procedures also apply to Redundancy. Redundancy is a potentially fair reason for a dismissal, but in order to avoid a claim for unfair dismissal

an employer must show that a fair procedure was adopted throughout both consultation and selection. More stringent rules apply where collective redundancies of 20 or more employees are made.

The Department of Trade and Industry statistics reveal that 48% of all claims in the Employment Tribunal originate from workplaces that have no written procedures. A relatively simple risk avoidance measure is to ensure that the new procedures are set out clearly within your employee's terms and conditions of employment.

ARE YOU DISCRIMINATING?

Prior to 1 October 2004 employers with less than 15 employees were excluded from complying fully with Disability Discrimination legislation. However the new Regulations have removed this exemption and now all employers must comply.

The change means that even small employers are obliged to make physical changes to their workplace or conditions of employment to avoid a disabled person being at a disadvantage.

A new form of direct discrimination has been introduced that cannot be countered by the defence of 'justification'. Now if a disabled person is treated less favourably on the grounds of their disability, an employer will be automatically liable.

There is no upper limit on the amount of compensation that an employee can be awarded for serious incidents. In our experience, even fairly minor, one-off incidents can lead to awards of up to £5,000 being made.

LOOK OUT FOR EMPLOYEE'S SUFFERING FROM STRESS

There is a wealth of case law stating that as an employer you should now, more than ever, consider the impact of work-related stress on your employees. If there is any suggestion that an employee is suffering from stress, you are required to investigate the causes and take prompt and reasonable steps to prevent further suffering. Failure to do so could result in the employee bringing a claim for damages against you.

LIABILITY FOR POST-EMPLOYMENT VICTIMISATION

The Employment Appeal Tribunal has ruled in the case of Metropolitan Police Service v Shoebridge that it was able to deal with a claim for sex discrimination when the employer's comment was made to the employee some 14 months **after** termination of the contract of employment. The Tribunal held that there was a sufficiently close connection between the alleged act and the previous employment relationship to warrant making an award of compensation.

ON THE BRIGHTER SIDE.....

STOP WHISTLEBLOWERS ACTING IN BAD FAITH

Street v Derbyshire Employed Worker Centre has established that it is reasonable for an employer to fairly dismiss an employee who has made an unfounded and malicious complaint against a colleague.

TIME OFF IN CONSEQUENCE OF DEATH OF A RELATIVE

The recent case of Foster v Cartwright Black Solicitors saw the Claimant arguing that time off in consequence of the death of a relative should be extended to include additional time needed to come to terms with the death.

The claim was rejected and the Employment Appeal Tribunal held that the right is restricted to the time required to attend to necessary arrangements such as registering the death, applying for probate and attending the funeral

PARENTAL LEAVE

In South Central Trains v Rodway the tribunal decided that parental leave should only be taken in blocks of one or two weeks and that an employer could reject requests for shorter periods.

CLAIMANT PREVENTED FROM BRINGING FURTHER CLAIMS IN THE EMPLOYMENT TRIBUNAL

In De Suza the Claimant, who had brought a number of claims in the Employment Tribunal wholly without merit, was actually prevented from bringing any further claims.

Fixed Fee PACKAGE

We offer employers peace of mind at a fixed cost. Our basic fixed-fee Employment Law package includes:

1. A review of your Terms and Conditions of Employment and Staff Handbook.
2. Unlimited free use of our Legal Adviceline.
3. Free dispute resolution service, should a disgruntled employee bring a claim against you.
4. Free representation at an Employment Tribunal, if a claim is not resolved.
5. Subscription to our regular, plain English, Employment Law Update.

The annual cost is based on the number of people you employ and we are always happy to adapt the package to suit your particular needs and budget.

If you would like further information about the legal support and advice package for employers, or any other matter, please contact Spencer Glazsher on **(01392) 423000** or, Kerry Curd on **(01271) 372128**.