EMPLOYMENT LAW SUPPORT

PROVIDING EMPLOYMENT LAW SOLUTIONS

February 2015 Update

Welcome to this month's edition of Employment Law update - where we discuss the latest legislation and guidance.

Shared Parental Leave Regulations

The Shared Parental Leave Regulations 2014 , coming into effect in April 2015 are possibly the most complex piece of employment legislation of the last decade.

Employers may start to get some questions about it - the guidance is hugely complicated so in summary:

- Employees are not obliged to take up the option of SPL and the current scheme of 52 weeks' Maternity Leave will remain the default position unless agreed otherwise.

- SPL gives parents who meet the eligibility criteria more flexibility regarding the leave they take upon the birth or adoption of a child. Both parents essentially share a 'pot' of leave which can be taken in turns or at the same time. Mothers will still be required to take at least two weeks' compulsory maternity leave immediately after the birth but the remaining time (a maximum of 50 weeks) can be shared by both parents as desired.

- For the first time, weeks of the 'pot' of leave can be used simultaneously by both parents. SPL must be taken in complete weeks and can either be taken in a continuous period, which an employer cannot refuse, or in a discontinuous period, which the employer may be able to refuse.

- To be eligible for SPL an employee must have at least 26 weeks' continuous service at the

end of the 15th week before the EWC. The employee must still be employed in the first week that SPL is to be taken and must give sufficient notice of their intentions. To qualify for Statutory Shared Parental Pay (ShPP) they must also meet the same average earnings threshold as with Statutory Maternity Pay.

- In addition to these criteria, the other parent must have worked for 26 weeks in the 66 weeks prior to the EWC and have earned a minimum of £30 in 13 of these 66 weeks.

Employers: Contact is of us if you need assistance with an SPL request or drafting any of the letters. You may need to add this new policy into your Company Handbooks.

How much Investigation is Enough?

In a suspected misconduct case does an employer have to investigate every line of defence put forward by an employee? No, found the Court of Appeal in Shrestha v Genesis Housing.

In this case S used his car to travel to see clients at their homes. An audit of his expenses claims for a three month period in 2011 revealed excessive mileage. S asserted that the high mileage he claimed was due to a number of factors, namely difficultly in parking, one way road systems and road works, causing closures or diversions.

The employer did not ask S about every mileage claim as every single journey that S had made was above the AA suggested mileage. It concluded that it was simply not plausible that there was a legitimate explanation for each and every journey. The employer concluded that gross misconduct had occurred and S was dismissed.

The employment tribunal dismissed a claim for unfair dismissal, a decision which was upheld by the EAT and Court of Appeal. It was found that an employer was required to carry out as much investigation into the matter as was reasonable in the circumstances and the employer's investigation was reasonable. It is too narrow to argue that each line of defence put forward by the Claimant must be investigated - the investigation should be looked at as a whole when assessing the question of reasonableness.

Employers: If you need to deal with an investigation into a misconduct issue by an employee make sure your investigation is as reasonable as possible, although you don't need to go into every detail. Contact us if you need assistance.

E-cigarettes in the workplace: first vaping tribunal decision is a warning for employers

E-cigarettes in the workplace pose a difficult question for UK employers. Should you treat them as if they are cigarettes or have different rules for their use? A recent UK employment tribunal case has highlighted how important it is for employers to ensure that the use of electronic cigarettes or "vaping" is included in their smoking policy.

The employment tribunal in *Insley v Accent Catering* considered a claim by a school catering assistant that she had been constructively dismissed by her employer.

The headteacher of the secondary school where the catering assistant, Ms Insley, was working complained to her employer, Accent Catering, that he had seen her using an e-cigarette at the beginning of the school day in full view of pupils. Insley resigned just before a disciplinary hearing was arranged by her employer to decide if her actions were serious enough to justify dismissal. The tribunal dismissed her claim of constructive dismissal, holding that the employer had acted properly.

The school's smoking policy prohibited smoking on school premises, but did not prohibit the use of e-cigarettes. If Ms Insley had been dismissed, she could have argued that it was unfair to dismiss her as using an e-cigarette was not expressly prohibited on school premises.

As the legislation prohibiting smoking in the workplace defines smoking as lit tobacco or any other substance that can be smoked when lit. E-cigarettes emit an aerosol that users inhale or 'vape' and this is produced from a heated solution containing nicotine.

"Employers cannot therefore rely on the legislation or their own policies that prohibit smoking to control the use of e-cigarettes in the workplace or to take disciplinary action for using e-cigarettes."

E-cigarettes are coming under increased scrutiny because of emerging concerns as to the health benefits for users and those exposed to second-hand vapour so many employers are beginning to ban their use.

Employers: **Employers cannot rely on legislation or current policies that prohibit smoking to control the use of e-cigarettes in the workplace. You will need to add in a section on e-cigarettes to make sure that the guidelines are clear for employees. Contact us if you need your policy reviewing.**

Employment Law Support advice includes:

- Company Handbooks
- Contracts of Employment
- Self Employed /Fixed Term Contracts
- Disciplinary & Grievance Procedures
- Training Agreement
- Discrimination including Age, Disability, Race and Sex
- Flexible Working
- Termination of Employment
- Managing Sickness
- Managing Redundancy
- Policies, Practice and Procedure
- Maternity and Paternity regulations
- TUPE
- HR consultancy

QUESTIONS?

As always, should you have any questions or comments please e-mail us at enquiries@employmentlawsupport.co.uk

Visit us online at www.employmentlawsupport.co.uk

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