EMPLOYMENT LAW SUPPORT

PROVIDING EMPLOYMENT LAW SOLUTIONS

May 2015 Update

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

Suspending Disciplinary Hearings if a Grievance is Lodged

- Potentially no need to duck for cover when the employee is firing blanks..

In the recent case of *Jinadu v Docklands Buses Ltd* the Employment Appeals Tribunal (EAT) found that an employer is not required to place on hold the disciplinary process while an employee's grievance is dealt with.

Employers will take comfort from this case as it found that the employer did not have to spend hours investigating each of the accusations in the employee's grievance before being able to complete the original disciplinary process.

The case involved a bus driver being summoned to a disciplinary hearing after reports of poor driving. During the proceedings the employee made a number of allegations against some of the managers involved. However the employer continued with the disciplinary proceedings and ultimately dismissed the employee. The employee claimed that her grievances should have been resolved before she was dismissed. The EAT ultimately decided that this was not the case and that the dismissal was fair.

Employers: This is a helpful case for employers but care needs to be taken in relying on such case as each case hinges on its own facts.

The EAT did not go into great depth as to why it rejected this argument made by the employee. This means that it is still uncertain as to when an employer can proceed with a dismissal without dealing with any grievances raised and when this would be inappropriate. However this case does make it clear that if a grievance is ignored then the dismissal is not automatically unfair. This in itself should provide

some encouragement to employers.

A disgruntled employee will often make accusations about managers who have criticised them. This should not absolve their input in the process.

If you believe the accusations could have an effect on whether or not the employee keeps their job, then this should be a part of your investigation. If however the grievances are unrelated to the employee's situation and simply a way of trying to delay the inevitable, then you should proceed with the disciplinary process as planned.

However we would strongly recommend, if at all possible, having an impartial person to chair any disciplinary hearing. This should be someone who has had no involvement with the investigation nor the employee previously.

Collective Redundancy Consultation - what is One Establishment?

Is a single retail store capable of being an 'establishment' for collective redundancy consultation purposes?

Yes, held the European Court of Justice (ECJ) in *Lyttle v Bluebird*, answering a reference from a Northern Ireland Industrial Tribunal, arising from the closure of some Bonmarché retail outlets across the UK in 2012.

This decision follows the Court's recent decision in the *Woolworths and Ethel Austin* cases, holding that the definition of 'establishment' was the entity or whole organisation to which workers are assigned to carry out their duties rather than the individual store, so this may be the end of line for the 'establishment' question.

Thus there must be at least 20 or more employees in one retail outlet at risk of redundancy to trigger collective consultation rather than 20 employees across the whole organisation.

New statutory pay rates increased from April 2015:

- A week's pay (for calculating redundancy/basic awards at Employment Tribunal etc) **£475**
- Lower Earnings Level **£112.00**
- Statutory Sick Pay **£88.45**
- Statutory Maternity/Paternity/Adoption/Shared Parental Pay **£139.58 or 90%** (whichever is lower)
- Limit on compensatory award for unfair dismissal **£78,335** (ever thought about Acas arbitration instead?)

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