



August 2015 Update

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

Occupational Stress?

An employee off on stress..

In the case of *Easton v B & Q* the High Court reconfirmed that for an employer to be held responsible for an employee becoming ill due to occupational stress the question is whether the injury suffered by the employee was reasonably foreseeable by the employer. The Court set out that an employer is generally entitled to take what an employee tells them of their condition at face value without the need for further enquiries unless the employer has good reason to think to the contrary.

Employers: This is a helpful case for employers. It also underlines the importance of good management in terms of keeping a record of what the employee says in relation to their condition.

An Employee's right to be accompanied at an Investigation Meeting

As most employers know, employees have the right to be accompanied to a disciplinary or grievance hearing by either a trade union representative or a colleague (section 10 of the Employment Relations Act 1999). There is no statutory right to be accompanied to an investigation meeting. Despite this, the High Court in England recently concluded that an employer's failure to allow an

employee to be accompanied at an investigation meeting by an individual, who was neither a trade union representative nor a colleague, was a breach of the implied duty to maintain the employee's trust and confidence.

In this case, Professor Stevens was employed on two different contracts by an NHS trust and the University of Birmingham. He was facing very serious allegations of misconduct and the University took the lead in investigating those allegations for both employers. The University's disciplinary procedure gave him the contractual right to be accompanied to an investigation meeting by a trade union representative or a colleague but, unlike the NHS contract, it did not allow him to bring anyone else with him. Professor Stevens was not a member of a trade union and the nature of his senior role meant he did not know any colleagues sufficiently well so he asked to be accompanied by Dr Palmer. Not wishing to set a potentially unhelpful precedent, the University refused to let Dr Palmer attend.

The High Court concluded that, as a matter of fact, Professor Stevens had no express contractual right to bring Dr Palmer as his companion. Nonetheless, it found that in refusing his choice of companion under the circumstances, the University had generally acted unfairly and it made a declaration that the University had breached the implied term of trust and confidence between employer and employee. Unusually, the court did not find that the breach ended the employment relationship, which raises the possibility that an employee can complain about breach of the implied term, while choosing not to resign in response to it, so that the employment relationship continues.

Employers: This is an interesting case as there is usually no expectation that an employee should have a companion at an investigation meeting, but here the employee had this as a contractual right.

However, what is important is that the case makes it clear that when considering whether a request to bring a particular companion should be allowed at any stage of a disciplinary or grievance process, the duty of trust and confidence might require an employer to consider a potentially wider range of companions than that specified either by statute or even in the employee's contract.

The inference that a class of companion should be allowed where this would not normally be the case, will often be strongest where 'fitness to practice' issues might flow from the outcome of the internal procedure, or the employer's decision might seriously affect the employee's ability to obtain further employment in their field.

Recent Legislative Changes

- Shared Parental Leave introduced for parents of children born or matched on or after 5.4.15.
- Additional Paternity leave - repealed
- Unpaid Parental leave extended to any parent of child under 18; effective April 15

- Statutory Adoption Pay Leave - no longer need 26 weeks service
 - Statutory Adoption Pay- 90% of normal earnings for first 6 weeks as per SMP
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