



October 2015 Update

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

Refusal by client to have employee back on site

An Employment Tribunal found that the dismissal of an employee by the employer for "*some other substantial reason*" when the client refused to have her back on its work site was fair.

The case of *Masini v Compass Group UK & Ireland Ltd* illustrates a classic situation where an employer was faced with the situation where a client refuses to have an employee back on its site.

A catering contractor provided a manager for a cafe in a business park. Following a fall in profits, the client insisted on a change of management. The catering contractor suggested that the manager be given more time, but the client was insistent that new management be installed. The contractor looked for alternative work for her, but she was dismissed following an internal job search and an appeal process.

Although a number of possible jobs were identified, she turned them down because they involved extra travel or a drop in status. The tribunal accepted that, while there was injustice to the employee, the employer had done what it could for her and that had no other option to dismiss her.

Employers: This is a very helpful indicator for employers and managers regarding the dismissal of an employee which a client refuses to have back on site. An employer must act reasonably to try and find her alternative employment within the business but if this is not possible then dismissal may be seen to be the only course of action.

Shared Grandparents Leave

You won't have missed the headline that the Government is planning to extend shared Parental Leave to include grandparents.

For those who find themselves answering questions about it, here are some important '*small print*' points missed off most of the press reports:-

- the Government's aim is to bring this in by 2018;
- it only affects working grandparents (non-working grandparents aren't likely to meet the eligibility criteria)

the Government will consult on the details during the first half of 2016

Employers: Shared parental leave came into effect in April 2015, make sure your Handbook is up to date with this change.

Time when sleeping?

An "on-call night care assistant" was required to be in the care home from 10 pm until 7 am and was able to sleep during those hours. However, he was required to respond to any request for assistance by the night care worker on duty. In return he received free accommodation and a small salary. The issue here was whether he was entitled to be paid for the hours between 10 pm and 7 am when he was required to be in the care home, including time when he was asleep or only when he was awake and actually performing work assisting the night care worker on duty.

The Employment Appeals Tribunal (EAT) agreed with the Tribunals earlier conclusion that he was not working throughout each night shift; only on those rare occasions when he was called upon to do so by the night care worker on duty so as long as he was paid the National Minimum Wage for those limited occasions, that was sufficient.

The second issue related to holiday pay. The claimant did not take holidays after the WTR came into force on 1 October 1998 and the question was whether he could carry forward his paid leave entitlement totaling some £15,000. The EAT found that where a worker could have requested paid leave but chose not to he cannot carry forward his past entitlement to pay in lieu of holiday pay.

Employers: this is helpful guidance where employees are needed to stay over at night and may be called out to assist from time to time while they are sleeping. It also makes it clear that if holiday entitlement under the WTR is not taken employees are not able to be paid for it and lose their entitlement, unless their employment is terminated they may then be paid for outstanding holidays.

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