EMPLOYMENT LAW SUPPORT

PROVIDING EMPLOYMENT LAW SOLUTIONS

November 2015 Update

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

Demotion – as an alternative disciplinary sanction

Some disciplinary and grievance procedures are built into a contract of employment by stating they are a part of the contract. The difficulty with this is that if a Company does not follow the procedures as set out they can be found to be in breach of contract as well as a possible claim of unfair dismissal.

We would therefore advise that the contract of Employment says that these procedures do not form part of the contract. But what about if an employer wishes to demote an employee after a disciplinary procedure instead of issuing a warning?

And what if the employee disagrees with the sanction and as a result resigns, can the employee proceed with a constructive dismissal claim? And is it considered to be a breach of contract?

The straightforward answer is that an employer doesn't have a unilateral right to vary the terms and conditions of employment. And if a demotion involves a significant change to the terms and conditions of employment, as it almost certainly would, then the employer, absent an express contractual right to do so, would not be entitled to impose a demotion as an alternative to dismissal.

Employers: Review your Employment Contracts to see that there is a contractual right to demote as an alternative to a disciplinary sanction.

Contact us for a Review

Unfair Dismissal – inconsistency of treatment

Does inconsistency of treatment make a dismissal unfair? Not necessarily, found the Employment Appeals Tribunal (EAT) in the case of *MBNA Limited v Jones*.

Two employees were at a corporate social event, prior to which the Company had warned all that normal standards of behaviour and conduct would apply. But the two began drinking and fell out. Mr Jones punched Mr Battersby in the face. In turn, later on, after the event, Mr Battersby texted Mr Jones on a number of occasions threatening, saying things like..., to "rip your f*ing head off". He never carried out his threats.

The outcome of a disciplinary procedure found that Mr Jones was dismissed for his behaviour but Mr Battersby was given a final written warning.

Mr Jones lodged a claim of unfair dismissal in the Employment Tribunal (ET) who found it unfair because of the inconsistency of treatment between the two. But, on appeal the EAT overturned this decision finding that there may be a range of reasonable ways in which an employer may react to the circumstances which give rise to the dismissal of an employee.

The ET had not drawn a distinction between a deliberate punch in the face at what was designated to be a workplace and a threat afterwards that was never carried out.

Employers: If a number of employees are involved in a disciplinary procedure and you wish to issue different sanctions on very similar circumstances ensure that you are able to justify the inconsistent treatment, especially if you have different managers and different departments dealing with it.

Contact us if you need help with an investigation / disciplinary issue

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Holiday Pay – when part-time workers increase hours

If a part-time worker increases her hours, is her employer obliged to recalculate her entitlement to annual leave retrospectively, even taking into account annual leave already accrued and taken?

No, held the European Court of Justice (ECJ) in the case of *Greenfield v The Care Bureau Ltd*.

The employee's working hours and days varied from week to week. However, she did increase her hours and after her employment ended, she claimed a payment for accrued but untaken annual

leave.

The ECJ held that annual leave must be calculated in accordance with a worker's contractual working pattern, and the hours, days (and fractions thereof) actually worked. However, the taking of leave accumulated in one period has no connection to the working hours in the later period when leave is actually taken.

It is already established that a reduction from full-time to part-time working should lead to no reduction in the amount of leave a worker has already accumulated until the reduction happens.

Employers: An employer must therefore distinguish between different periods of different working patterns and calculate the leave that accumulates in each period separately, taking the same approach whether this is during employment, or after it has ended.

Contact us for advice on holiday pay calculation

For more information or assistance

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