EMPLOYMENT LAW SUPPORT

PROVIDING EMPLOYMENT LAW SOLUTIONS

February 2017 Update

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

Apprenticeship levy – are businesses ready?

From 6 April 2017, the levy will require employers with a wage bill of more than £3 million a year to pay 0.5% of their wage bill to fund apprenticeship costs.

A breakdown of the 2017 young workers survey data by organisation size, suggests that small and medium-sized enterprises (SMEs) may be less well prepared for the impact of the levy, while large employers are more likely to be putting plans in place to use young apprentices to cover the cost of the apprenticeship levy.

Just over half (53%) of medium-sized employers and a quarter (25%) of small employers say that the levy will result in them increasing their use of young apprentices, to gain the value from the levy.

Employers: It is therefore possible that some SMEs could find that they need to increase their recruitment of young apprentices in future to recover these costs, once the full impact of the apprenticeship levy becomes apparent

Contact us: we can assist with drafting apprenticeship contracts

Failure to act – can this amount to gross misconduct?

The Court of Appeal has held that in the case of *Adesokan v Sainsbury's Supermarkets Ltd*, inaction at a senior level justified dismissal.

A Regional Manager became aware that an HR Manager had issued an email which attempted to interrupt an important management consultation exercise. Despite being aware of this email the Claimant did nothing to get it withdrawn or to remedy the situation. At the disciplinary hearing, it was decided that his inaction demonstrated gross negligence which was "tantamount to gross misconduct" and he was therefore dismissed.

It was found that even though the inaction of the Claimant was not deliberate, his negligence and failure to act was so serious that it resulted in a "loss of trust and confidence" sufficient to justify dismissal.

Employers: It is unusual that a failure to act amounted to gross misconduct, however, on the facts of this case the senior position of the Claimant had in the Company justified the dismissal.

Contact us: we can assist with practical advice on dealing with disciplinary hearings.

Does long-term stress amount to a disability?

Not necessarily found the Employment Appeals Tribunal (EAT) in the case of *Herry v Dudley MBC.*

The employee had two disabilities: dyslexia and stress. The EAT considered the distinction between stress and mental illness. Nursing grievances or a refusal to compromise are not of themselves mental impairments."

In this case the employee was unable to establish a mental impairment or to show how stress had a substantial impact on normal day to day activities.

The EAT upheld the decision of the Employment Tribunal and found that a long period off work is not conclusive of the existence of a mental impairment. There can be situations where a reaction to circumstances becomes entrenched without amounting to a mental impairment. An employee's stress may be a result of unhappiness about what is perceived to have been unfair treatment, which would not amount to a disability.

To be a disability an employee would need to show how the stress affects their ability to carry out normal day to day activities.

Although this case contains gives helpful guidance for employers, be careful when reaching the conclusion whether an employee suffering from stress is disabled. The margins are fine and ultimately it is only the Tribunal that can decide if it falls into the definition of disability under the Equality Act. Each case will turn on its specific facts.

Employers:

Employers should seek to obtain information from occupational health and other medical practitioners, to help reach an informed decision about whether an employee meets the definition of disability under the Equality Act.

Contact us: we can help with long-term health issues at work

For more information or assistance Email: enquiries@employmentlawsupport.co.uk

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