



EMPLOYMENT LAW UPDATE

July 2011

Welcome to the July issue of the Moore Blatch Employment Law Update. This monthly bulletin will keep you updated with the latest happenings and legislative changes in the world of employment law.

2012 Bank Holidays - the Diamond Jubilee announced

It has been announced that Tuesday 5th June 2012, will be a bank holiday to commemorate the Queen's diamond jubilee. The late May bank holiday is going to be moved to Monday 4th June 2012, to allow for a four day weekend of celebrations. Employers will need to consider whether their current employment contracts will entitle, as of right, their employees to the benefit of this additional bank holiday and plan for this extended holiday.

The government has now published its final guidance on the Agency Workers Regulations 2010

The Regulations are due to come into force on 1st October 2011. The key requirement to the Regulations are that basic working employment conditions are to be provided to temporary workers that are not less favourable than they would have been if the individual had been recruited directly by the hirer. This covers conditions in relation to their pay, paid holiday, working hours, overtime, maternity and anti-discrimination provisions, and arguably pension contributions. Employers need to make sure that they are taking practical steps to help them ensure that they don't fall foul of the new Regulations when they come into play in October 2011. Employers will need to liaise closely with the agencies through whom they hire agency workers so that together they work to ensure that the Regulations are not breached.

Some of the rights provided under the Regulations apply from the first day that an agency worker starts working for a hirer. This includes access to collective facilities and amenities which include canteens, childcare facilities and any transport that is provided.

Once the agency worker has provided their services to the hirer in the same role for 12 continuous weeks, hirers need to make sure that their terms and conditions are not any less favourable than they would have been if they had hired the agency worker directly.

Race and sex claims struck out

In the case of *Community Law Clinics Solicitors Ltd and Ors v Methuen*, the EAT has held that discrimination claims should not be permitted to proceed to trial where a dismissed employee bases their claim on the fact that they were replaced by somebody of a different race and sex. Such a claim should be struck out.

The claim was brought by a 53 year old Asian lawyer who was dismissed because he did not meet his billing targets. His position was partly filled by a replacement who was a female, younger Afro Caribbean solicitor. Mr Methuen argued that because he had been replaced by somebody who was of a different race that this showed, on the face of it, a case of discrimination which shifted the burden of proof to his employer who he claimed should then rebut it. He argued that the facts were such that the Tribunal should decide, in the absence of any other explanation, that his employer had contravened discrimination law and that it was then up to his employer to show to the tribunal that they had not.

The employers asked the Tribunal at an early stage of the claim to strike out Mr Methuen's claim on the basis that it had no reasonable prospect of success. The Tribunal failed to strike the claim out on the basis that there was some prospect of Mr Methuen being able to point to some relevant fact at trial that could assist with his claim. The employers appealed against this decision. The EAT who heard that appeal decided that discrimination claims based on these principles should not proceed to trial. The EAT stated in its decision that it was not sufficient for Mr Methuen to say "unless I am replaced by a man of Asian ethnic origin who is 54 years old or very close to it indeed there is a prima facie case of discrimination and the burden of proof then shifts to my employer to rebut it". His claim was ordered to be struck out on the basis that it had no reasonable prospect of success.

Bribery Act 2010

The Bribery Act 2010 came into force on 1st July. It replaces England's old and much criticised laws on bribery.

The new Act creates four separate offences - the general offences of paying and receiving bribes, the bribery of foreign officials and the failure of commercial organisations to prevent bribery.

Under the new Act, an individual convicted of bribery can receive a maximum jail term of 10 years. A company convicted of failing to prevent bribery could receive an unlimited fine.

Employers will be able to defend themselves if they can show that they had adequate procedures in place to prevent bribery by or of those associated with the organisation. Therefore, the Act puts significant pressure on companies doing business in the UK to ensure that they have appropriate anti-corruption procedures in place to deal with offences under the Act. The Employment team at Moore Blatch are happy to provide further advice in relation to the new legislation.

Contact Us

If you require any further advice on any of the issues contained in this update, please do not hesitate to contact us.

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