



EMPLOYMENT LAW UPDATE

June 2011

Welcome to the June 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.

An employee remanded in custody was not entitled to his wages

The Employment Appeal Tribunal (EAT) recently considered an unlawful deduction from wages claim brought by a prisoner on remand. In the case of *Burns vs Santander*, Mr. Burns, who was the Branch Manager for Santander Bank, was arrested and charged with criminal offences. He was remanded in custody pending his trial. At trial he was convicted for common assault and assault with intent to commit sexual assault.

The Bank kept Mr. Burns' job open for him pending the outcome of the trial, but stopped paying his wages whilst he was on remand in prison. After he was convicted and released from custody, the Bank placed him on paid suspension pending disciplinary proceedings which ultimately led to his dismissal. Mr. Burns brought an unlawful deductions claim for his unpaid wages during the period that he was being remanded in custody. The Tribunal dismissed his claim. They were of the view that his entitlement under his contract to pay came to an end when he stopped attending work. Mr. Burns appealed against the Tribunal's decision. He argued that he was entitled to be paid as he was willing and ready to work, but was "unavoidably" prevented from doing so because he was remanded in custody.

The EAT agreed with the Employment Tribunal's decision and did not award Mr. Burns his unpaid wages. They considered that Mr. Burns' remand in custody was an avoidable impediment which gave rise to circumstances where it was implied that he was not entitled to his wages for that period. Effectively Mr. Burns had conducted himself in such a way that according to the Court, he should be deprived of his freedom.

Consultation on modern work places

On 16th May 2011 the government published its consultation on modern work places which sets out a four stage plan for a culture of flexible family friendly employment practice in Great Britain. In the consultation document, the government makes proposals for some new systems of shared flexible parental leave, an extension of the right to request flexible working, revisions to the way annual leave is dealt with under the Working Time Regulations 1998 and compulsory pay audits for employers who are found guilty of pay discrimination.

Currently statutory parental rights are made up of the following:

- Maternity rights which include paid time off to attend ante-natal appointments and 52 weeks maternity leave.
- Paternity rights which includes two weeks ordinary paternity leave. Thereafter, subject to qualifying criteria, which includes the mother returning to work, additional paternity leave for up to a further 26 weeks.
- Unpaid parental leave for those with one year's continuous employment who are entitled to 13 weeks unpaid parental leave per child. The leave has to be taken before the child's fifth birthday, or, if the child is disabled, the amount of leave is increased to 18 weeks and it can be taken up to the child's 18th birthday.

Proposals made by the Consultation

The government is proposing a new system which will, subject to affordability, be introduced in April 2015. The new system would incorporate the following:

- Unpaid leave for fathers to attend ante-natal appointments.
- An 18 week period of maternity leave. This period of leave would be reserved exclusively for mothers and taken in a continuous block around the time of the baby's birth. Fathers would continue to be entitled to ordinary paternity leave.
- A new 34 week period of shared parental leave. With maternity leave reduced by 18 weeks, the remaining 34 weeks of maternity leave would become parental leave and would be shared between both parents. Additional paternity leave would stop. Mothers would be able to combine maternity and parental leave to take the same amount of statutory leave as they can now, i.e. 52 weeks.

- An additional four weeks of paid leave would be provided for the exclusive use of each parent. It is not intended that this will reduce the mother's overall leave rights. She could still take the full 52 weeks leave.

Rules on how and when the leave can be shared are yet to be drawn up and will be subject to comments obtained during the consultation process.

The current rule that a parent must have one year's continuous employment before they can take unpaid parental leave would be removed.

Extending the right to request flexible working to all employees

At the moment certain employees who have 26 weeks' continuous employment have the right to request flexible working arrangements and their employers have to consider the request. Only one request can be made in any 12 months. The consultation proposes the following:

- The requirement for 26 weeks' continuous employment will remain unchanged. However, the government is keen that employers consider flexible working opportunities at the point of recruitment.
- The current statutory procedure for considering requests would change. This would be replaced with a new duty on employers to consider requests reasonably. For example, within a reasonable time and in a fair and reasonable manner.
- A second request for a temporary change could be made by an employee within a 12 month period.
- Opening up the right to make a request to all employees and not just those with requests that arise from the demands of being a parent or carer.

Rescheduling or carrying over annual leave

We have reported on a number of cases over the last 18 months that have looked at an employee's right to carry over annual leave from one holiday year to the next when they have been prevented from taking holiday due to long term ill health, or rescheduling holiday when they haven't been able to enjoy it because of absence on the basis of ill health. The cases have led to uncertainty under the Working Time Regulations in the UK and the government proposes to rectify this situation. The consultation makes the following proposals:

- Where a worker has been unable to take their annual leave due to sickness absence, or falls sick during scheduled annual leave, and it is not possible to reschedule the leave in the current leave year, they will be able to carry that leave over into the following leave year.
- A proposal that the Working Time Regulations are amended to allow leave which is untaken due to absence on maternity, adoption, parental or paternity leave to be carried over into the next leave year.

These changes would give much needed clarification to the current position in relation to holiday accrual and rights.

Compulsory pay audit

The government is proposing to introduce new legislation that will require Tribunals to order an employer to conduct and publish a pay audit if it is found that the employer breached the Equality Act 2010, either by discriminating because of sex in relation to non-contractual pay or by breaching the equality clause in relation to contractual pay.

Many employers will just be getting to grips with the recent changes to paternity leave and will not welcome further changes to what is already a complicated area of law. In addition, the proposal to broaden the right to request flexible working will place additional administrative burden on employers in difficult economical times. All these issues will be considered during the consultations, which are due to continue until 8th August 2011. We will keep our clients updated as matters develop.

Contact Us

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

Katherine Maxwell
Partner & Head of Employment
Direct Dial: 023 8071 8094
Email: katherine.maxwell@mooreblatch.com
www.mooreblatch.com

MOORE BLATCH
 solicitors

Moore Blatch is the trading name of Moore Blatch LLP, which is a limited liability partnership registered in England and Wales, registration number OC335180. The registered office is 11 The Avenue, Southampton SO17 1XF. The firm is not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment services to clients because we are members of the Law Society. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide.

Regulated by the Solicitors Regulation Authority. The information contained in this update is correct as at June 2011.