MOORE BLATCH

UPDATE

Employment - September 2017

GENDER PAY GAP REPORTING

DON'T FORGET!

SHARED PARENTAL LEAVE

DON'T GET CAUGHT OUT

EMPLOYMENT CLAIMS ON THE RISE

WATCH OUT!

WELCOME TO SEPTEMBER'S EMPLOYMENT LAW UPDATE

We know many of you have concerns in relation to the upcoming changes to data protection legislation. On 25 May 2018 the largest ever overhaul of data protection laws will take effect. Businesses must comply with the charges or face hefty fines of up to £20 million. Dorothy Agnew, a partner in our commercial department has produced a definitive summary of the new General Data Protection Regulations (GDPR) to help you navigate the changes.

To arm your business with the key GDPR facts on what you need to do from a legal and a marketing point of view Moore Blatch and Carswell Gould have joined forces to provide you with the vital details at breakfast briefings in Richmond and Southampton. For further information on the breakfast briefings and to book your space please follow this link.

We also welcome Harriet Allsop to our team as a trainee solicitor. She will be assisting the team between September 2017 and March 2018.

If you have any comments or questions, please do not hesitate to contact me on 023 8071 8094. You can also follow us on Twitter for the latest employment news @MBEmployment.

Katherine Maxwell
Partner and head of employment
023 8071 8094
katherine.maxwell@mooreblatch.com

MORE EMPLOYMENT CLAIMS ARE BEING BROUGHT BY EMPLOYEES

WATCH OUT!

On 26 July 2017 the Supreme Court handed down a landmark judgment, finding that tribunal fees for those bringing employment tribunal claims are no longer lawful.

Originally introduced by the government in 2013, fees of up to £1,200 were introduced in the hope that it would reduce the number of malicious and weak cases. The recent ruling by the Supreme Court found that the government was acting unlawfully and unconstitutionally in introducing these fees. In response, the government has said it will take immediate steps to stop charging employment tribunal fees.

Employees who have brought a case since July 2013 will have their fees refunded by the government, with the government expected to pay up to £32 million in refunds.

The introduction of employment tribunal fees coincided with a sharp drop in the number of cases being brought by employees, from approximately 13,500 individual claims per quarter prior to 2013 (before the fees were introduced), to an average of 4,400 claims per quarter once employment tribunal fees came into force. This drop was considerably higher than the government expected and was, in part, one of the reasons for the Supreme Court's decision to drop the fees, realising that it was perhaps putting off genuine claims as opposed to simply deterring those without merit.

This drop in the number of cases brought following the introduction of the fees suggest that, following this ruling, we could well see an increase in the number of claims being brought by employees.

Although employees will no longer have to pay tribunal fees, they will of course still have to pay legal fees if they want legal representation.

Only time will tell whether we do see an increase in the number of claims being brought. However, there could well be an increase in the number of claims being brought by individuals without representation (litigants in person), something which could potentially cost businesses thousands of pounds to defend.

Naomi Greenwood
Partner
020 3274 1006
naomi.greenwood@mooreblatch.com

CALCULATING A WEEK'S PAY CORRECTLY

The Employment Appeal Tribunal recently upheld a ruling by the Employment Tribunal that an employer's pension contributions should now be included when calculating a week's pay.

Previously an employer's pension contributions were not included when calculating a week's pay, presumably because the pension contributions were not paid directly to the employee. However, the Appeal Tribunal held that the pension contributions should be included on the grounds that a week's pay should be calculated according to what is "payable by the employer under the contract of employment".

Even though an employer's pension contributions do not go directly to an employee, they should still be included when calculating a week's pay. This will be particularly significant for those employees that are members of a defined pension scheme, as well as those payments or remedies where the value of a week's pay is not capped.

We advise ensuring all employees in the relevant roles who will be affected by this are updated accordingly.

Emma Edis
Associate solicitor
023 8071 8872
emma.edis@mooreblatch.com

VOLUNTARY OVERTIME MUST BE INCLUDED IN HOLIDAY PAY

The Employment Appeal Tribunal (EAT) has ruled that voluntary overtime must be included when calculating holiday pay.

The EAT dismissed an appeal by Dudley Metropolitan Borough Council against Mr G. Willetts and others which included 56 council employees working as electricians, plumbers, roofers, storemen, operations officers, and quick response operatives. These workers had brought employment tribunal claims for unlawful deductions from their wages with regard the way in which their holiday pay was being calculated, arguing that the calculations should include payments for voluntary overtime. The EAT's ruling endorses the decision made in this case by the employment tribunal.

The EAT accepted that staff could "drop on and off the rotas to suit themselves whether day by day, week by week, month by month or permanently" with additional working being "almost entirely at the whim of the employee".

The tribunal stressed that 'normal pay' must be included in holiday pay calculations, and that the overtime payments that were being made by the Council were regular enough to be regarded as 'normal pay'.

This means that if employees regularly voluntarily work overtime, and this pattern of work is consistent over a sufficient period of time, then voluntary overtime pay must be included when calculating holiday pay.

However, it remains at the discretion of employment tribunals to decide on individual cases as to whether voluntary overtime is "regular and settled", meaning it should be part of holiday pay calculations.

In light of this ruling, businesses who engage workers that voluntarily work overtime on a regular basis are advised to revise holiday payments accordingly.

Naomi Greenwood
Partner
020 3274 1006
naomi.greenwood@mooreblatch.com

GENDER PAY GAP REPORTING

DON'T FORGET

The BBC has, once again, found itself amongst a media storm after publishing the salaries of its highest paid stars. It transpired that Gary Lineker was paid ten times more than Clare Balding and the BBC's highest paid woman, Claudia Winkleman, was paid just a fifth of what its best paid male star, Chris Evans, earnt. Once again the gender pay gap is a hot topic.

The gender pay gap reporting regulations came into force on 6 April 2017. Any company who, as of 5th April 2017, had 250 or more relevant employees will need to comply with these regulations by completing a report that needs to be published by 4 April 2018.

For more information you can see the guidance note on our website here.

Stephanie Bowen
Solicitor
023 8071 8185
stephanie.bowen@mooreblatch.com

CHANGES TO EMPLOYMENT LAW

THE "GIG ECONOMY"

The gig economy is often defined as "a labour market characterised by the prevalence of short-term contracts or freelance work, as opposed to permanent jobs." Prior to going mainstream, the term 'gigging' was most commonly used in the musical world, for those musicians who are only paid per concert, or 'gig' they do. Now the term has gone mainstream, how you interpret the 'gig economy' can vary according to your point of view. For some it offers a flexible working environment, for others it represents exploitation.

The Taylor Review of modern working practices puts forward proposals to help bridge this divide. More importantly it puts forward a number of proposals for updating the law to be more in line with modern working practices - including clarifying the law governing employment status and adjusting the scope of various employment protections. It advocates "good work" as opposed to jobs that make people little more than "cogs in a machine". The review has a particular focus on self-employed workers who are engaged in the gig economy.

The report advises enshrining the key definition of 'employee' status in primary legislation. It also re-defines the role of 'worker' so that the obligation to provide personal service no longer prevents an individual from being eligible for basic employment rights. For those who are 'workers' but not 'employees' it recommends the introduction of a new term, 'dependent contractor'. And it advises widening the definition of 'output work' to include those who provide their services through a digital platform.

Whereas some of the report's proposals are straight forward, others – such as the new definitions of "employee" and "worker" mentioned above – will obviously require much thought and consideration.

Katherine Maxwell
Partner and head of employment
023 8071 8094
katherine.maxwell@mooreblatch.com

CHECK YOUR FAMILY FRIENDLY POLICIES ARE NOT DISCRIMINATORY

DON'T GET CAUGHT OUT

Shared parental leave (SPL), which came into force in April 2015, allows parents to share up to 50 weeks of leave, 37 of which are paid, following the birth or adoption of a child.

A recent sex discrimination case has highlighted the need for employers to ensure their policies surrounding shared parental leave, maternity pay or paternity pay are not discriminatory. In this case, an Employment Tribunal found that a father had been discriminated against on the grounds of his sex. The father, Mr Ali, had originally planned to take two weeks' paternity leave. Following his wife's diagnosis with post-natal depression and medical advice that she should return to work, he turned to shared parental leave so he could remain at home to look after his child.

The issue for the company at the centre of the case, Telefonica, was that their policy entitled new mothers to 14 weeks of full pay. Fathers, however, were only entitled to two-weeks full paternity pay. Any SPL taken beyond that would be at the statutory rate. It was this discrepancy in pay offered to the mother versus the father that formed the basis of Mr Ali's successful claim.

Although the decision by the tribunal was a first instance decision, and therefore not binding, it does highlight the need for businesses to thoroughly check their policies to ensure they are not discriminatory in any way. Policies put in place in good faith could, on closer examination, be found to be unintentionally discriminatory. Remember, while having a successful business model behind you is undoubtedly an advantage, it is not a guarantee that it will work elsewhere within other markets or that new offerings will result in the same success. The business graveyard is littered with organisations that took on too much and failed. Your task is indeed to take on new challenges as you look to constantly expand, but measure your risk and do your best to secure the company for all eventualities.

Katherine Maxwell
Partner and head of employment
023 8071 8094
katherine.maxwell@mooreblatch.

HOLIDAY PAY

WHAT A HEADACHE

Emma Edis will be joining forces with Wilkins Kennedy to present a workshop on the confusing topic of: 'Holiday pay – should commission, bonus and overtime be included in your calculations?'

For more information please click here.

Emma Edis
Associate solicitor
023 8071 8872
emma.edis@mooreblatch.com

MOORE BLATCH

www.mooreblatch.com

Moore Blatch LLP is authorised and regulated by the Solicitors Regulation Authority.