MASSERS

EMPLOYMENT LAW UPDATE

OCTOBER 2014

ICO warning about taking personal data to a new job

The Information Commissioner's Office (ICO) has issued a warning to employees that taking any personal information of their employer to a new job is a criminal offence.

A paralegal was prosecuted under s.55 of the Data Protection Act and fined and ordered to pay the prosecution's costs after he took sensitive information relating to 100 people to a new firm. Prior to leaving, he sent six emails attaching workload lists, file notes and template documents to use in his new role. These emails contained sensitive personal data.

Employees often think that documents they have produced at work belong to them and they are entitled to take them when they leave. The ICO has warned that if such documents contain personal details it is a criminal offence and can attract a fine of up to £5,000.00 in a Magistrate's Court, or an unlimited fine in a Crown Court.

Employers should be aware of the importance of having a data protection policy in place to help ensure compliance with the Data Protection Act. Aside from data protection issues, it is also important to consider the relevance of including post-termination restrictions in contracts of employment to expressly protect company information when someone leaves.

Former banker claims £14 million for sex discrimination

Svetlana Lokhova brought a successful employment tribunal claim for direct sex discrimination and gender-related harassment against Russian bank Sberbank CIB (UK) Ltd.

At a hearing this month to determine the level of compensation to be awarded, she told the London Central Employment Tribunal that she should receive £14 million to compensate her for loss of earnings and injury to feelings. She argued that she will no longer be able to work in finance and any other role she secures will be significantly less well-remunerated and as such the award ought to reflect this. A judgment is expected next month.

Ms Lokhova succeeded in her claim after the Tribunal heard evidence that colleagues had referred to her as "mad Svetlana", "crazy Miss Cokehead" and "a major car crash".

This case demonstrates the potential for the Tribunal to make significant awards in discrimination cases, where there is no upper limit on the level of compensation. Employers can take steps to reduce the risk of discrimination claims, such as implementing an equal opportunities / anti-harassment and bullying policy and ensuring all staff are trained in this area. It will help an employer defend a discrimination claim if they can show that they have taken all reasonable steps to eliminate discrimination. Any complaints of discrimination and bullying or harassment should be taken seriously and properly addressed.

Disciplinary proceedings and the duty of care

In *Coventry University v Mian* the Court of Appeal considered whether an employer can be seen to have breached an employee's contract in instigating disciplinary proceedings without undertaking due enquiry.

Dr Mian was a senior lecturer at Coventry University. She was charged with having written a misleading reference for a former colleague which overstated his qualities and qualifications. Dr Mian denied having sent the reference, yet a search of her computer revealed drafts which were very similar. Dr Mian said that she had been naive but had not been involved in the provision of a false or misleading reference; rather her former colleague had sent her draft references which were what she had saved on her hard drive. She said she had sent a shorter reference but she had not saved a copy.

Shortly after these initial meetings Dr Mian went off sick and the disciplinary hearing went ahead in her absence. The allegations against her were not upheld, however Dr Mian didn't return to work and instead brought proceedings for breach of contract and / or negligence leading to personal injury.

At first instance her claim was successful and the matter went all the way to the Court of Appeal. The Court of Appeal overturned the decision. The question to be decided was whether the decision to commence disciplinary proceedings was reasonable at the time it was taken. Notwithstanding the fact that the disciplinary proceedings were ultimately dismissed, at the time they were commenced, based on the information before it, the University acted reasonably in the circumstances.

This case should reassure employers that in instigating disciplinary proceedings they will not automatically be seen to have breached the contract of employment if it ultimately transpires that the employee was not guilty of the alleged misconduct.

And finally….

We will be holding our last free breakfast seminar of the year on Wednesday 19th November 2014 - "A review of 2014: the changing landscape of employment law".

Places are limited so contact Natalie today at nataliea@massers.co.uk to reserve your place.

Contact Us

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