

MASSERS

EMPLOYMENT LAW UPDATE

DECEMBER 2014

Introduction of Shared Parental Leave Scheme

The Shared Parental Leave Regulations 2014 and Statutory Shared Parental Pay (General) Regulations 2014 came into force on 1 December 2014.

Parents of children born or placed for adoption on or after 5 April 2015 will be able to elect to share up to 50 weeks' shared parental leave and 37 weeks' shared parental pay between them, provided they meet certain eligibility criteria. A mother or primary adopter will be able to curtail their maternity/adoption leave and share the remaining leave with the other parent. They will be able to return to work without sacrificing the remaining leave which would otherwise have been available to them.

Parents will be able to take leave either concurrently or consecutively, however may not exceed 50 weeks' leave in total. The pattern of leave will be subject to negotiation with their employer.

Judicial Review of Employment Tribunal Fees

Unison's judicial review application, which challenged the legality of the employment tribunal fees regime, has been dismissed by the High Court.

Unison challenged the regime on two grounds. The first that it was unlawful as it made it virtually impossible for potential claimants to bring a claim. The High Court dismissed this argument, in large part because Unison did not provide evidence from any specific individuals who had been prevented from bringing a claim as a result of the fee regime. Unison relied instead upon statistics showing a significant drop in the number of claims being issued, which the court felt did not necessarily evidence an inability to proceed as a result of the regime.

The second ground for challenge was that the fee regime would have an indirectly discriminatory impact on women. Fees fall into two categories; Type A claims attract a lower fee, whereas Type B claims, for example discrimination or equal pay, attract a higher fee. Unison argued that more women than men were likely to pursue Type B claims and have to pay higher fees. The court found that this was not borne out by the statistics. In any event, the court found that the difference in fees could be justified as the more complex the claim, the higher the cost to the tribunal service. Further, if those bringing claims paid a fee, their cases would be dealt with more efficiently and it may encourage settlement.

This may not be the last we hear of the challenge to the fee regime as the High Court has granted permission to appeal.

Parliament to limit holiday pay claims to two years

Last month we reported on the EAT's Judgment in *Bear Scotland v Fulton and another UKEATS/0047/13 (and conjoined cases)*, which stated that non-guaranteed overtime should be included when calculating holiday pay for the purposes of the four weeks' statutory annual leave required by the Working Time Directive.

The Government has announced that, in order to protect UK businesses from the impact of large and potentially damaging backdated claims, it will impose a cap of two years on claims for back pay. It is believed that this limit will apply to claims lodged on or after 1 July 2015.

Is obesity a disability?

In June this year we reported on a test case being brought before the ECJ to determine whether obese workers ought to qualify for protection from disability discrimination under the Equality Act 2010 (*FOA (Kaltoft) v Billund*). The case was brought by child-minder Karsten Kaltoft who was dismissed by his local authority in Denmark for being unable to perform his duties due to his size.

The ECJ has handed down Judgment, holding that obesity can be a disability. There are circumstances in which obesity places limitations on an individual's ability to participate fully in professional life on an equal basis with other workers. The origin of the disability is irrelevant.

It will be for the national courts to assess a case on its merits and see whether the conditions for obesity to be a disability are met, and it is possible that obese claimants may be able to establish that they are disabled.

Employers may therefore need to approach obesity in the same way as any other physical or mental impairment, preventing any less favourable treatment on grounds of an employee's weight, which would include dismissal. Employers should also consider reasonable adjustments, for example, providing parking spaces close to the workplace or special desks and chairs.

From all here at Massers, we would like to take this opportunity to wish you a Happy Christmas and look forward to seeing you in the New Year.

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