MASSERS

EMPLOYMENT LAW UPDATE

JANUARY 2015

Fit for Work Service

A team of 20 GPs based near Sheffield have become the first to get involved in trialling the new Fit for Work Service. Their feedback will be taken into account by the service provider, Health Management Ltd, when rolling out the scheme nationwide.

The service is being rolled out over the coming months and is expected to be available across the UK by May 2015. The aim of the service is to prevent long-term absence and encourage employees back into work.

The Fit for Work service enables GPs to refer employees who have reached, or who are expected to reach, 4 weeks' sickness absence for occupational health assessments. Referrals will not be mandatory and will likely depend on the individual circumstances and nature of the illness. Following a referral an initial assessment will be carried out, usually by telephone, with a view to drawing up a return to work plan.

It is expected that the referral service will in time be extended to enable referrals by employers however at present is limited to GP referrals.

The Fit for Work website is now up and running and can be accessed at www.fitforwork.org. The site provides guidance on the service and general advice on handling sickness absence.

Social Media and Unfair Dismissal

In *Game Retail Ltd v Laws UKEAT0188/14* the Employment Appeals Tribunal (EAT) has held that a dismissal for offensive, non work-related tweets could potentially be fair.

Mr Laws (L) was a risk and loss prevention investigator with responsibility for approximately 100 stores. Game Retail (Game) has over 300 stores in the UK, each of which has its own Twitter account. L had a personal Twitter account and followed the 100 stores for which he was responsible, mainly to monitor their activity. Further, he allowed 65 stores to follow him. L's account did not specifically associate him with Game. He did not use the restriction settings available and as such his tweets were publicly visible.

In July 2013 a manager raised concerns with Game about allegedly offensive tweets and, further to an investigation, L was summarily dismissed for gross misconduct. L brought a claim for unfair dismissal.

At first instance, an employment tribunal upheld his claim on the basis that the tweets were posted for private use, and Game's disciplinary policy did not clearly state that inappropriate use of social media in an employee's private time would be treated as gross misconduct. Game appealed.

The EAT allowed the appeal, finding that L's tweets could not properly be considered private and that dismissal was within the range of reasonable responses available to Game.

L's account was personal, however the tribunal had failed to consider the fact that stores following L would have access to his tweets. L knew that he was being followed by 65 stores and that his tweets could be seen by staff and also potentially customers of those stores.

Further L hadn't restricted the privacy settings on his account and his followers weren't restricted to friends or social acquaintances.

The EAT also found that it wasn't necessary to consider whether the tweets had actually caused offence, rather whether there was a theoretical risk that they might have done. It wasn't necessary for the offensive comments to have related to Game or to have identified L as an employee in circumstances where L followed 100 stores and was followed by 65.

In determining cases such as this the tribunals have to balance an employee's freedom of expression outside the workplace with an employer's desire to remove reputational risk to its business. Social networking sites such as Twitter and Facebook are of a public nature, and employers would be advised to introduce specific social media policies which set out their expectations of social media use and the potential sanctions of a failure to adhere to the policies. For example, it may be advisable for employees to have separate personal and work-related accounts.

Support amongst Employees for the Shared Parental Leave Scheme

Last month we reported on the new system of Shared Parental Leave (SPL) Scheme which came into force on 1 December 2014 and will be available to all new parents whose child is born or placed for adoption on or after 5 April 2015.

Under the scheme eligible parents will be able to share 50 weeks' leave between them (and up to 37 weeks' statutory pay). The legislation is aimed at encouraging men to share responsibility for childcare and to help reduce the potential career disadvantages to women in taking lengthy periods of maternity leave. This month, BIS published the results of a survey into attitudes towards shared parenting and to assess the potential take-up of the scheme. The results show that at present, 63% of women compared to just 23% of men are the main childcare provider, with the remainder already sharing childcare or receiving external support. 64% of the respondents were aware of the introduction of Shared Parental Leave. 67% of parents questioned said they would have considered taking up the option of SPL had it been available to them, with 75% of fathers and 63% of mothers saying they would have done so. Of those respondents considering having children in the future, 83% said they would consider taking SPL.

The statistics may come as a surprise to those who did not anticipate a high take up of SPL, and indicate that the new scheme is something employers need to make provision for sooner rather than later.

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