

# MASSERS

## EMPLOYMENT LAW UPDATE

FEBRUARY 2015

### Annual Compensation Limit Increase

Where an employee complains of an act occurring on or after 6 April 2015, the limit on the amount of compensation which a tribunal can award will increase as below:

- Cap on a week's pay: £475.00 (currently £464.00)
- Maximum compensatory award: £78,335.00 (currently £76,574.00)

The cap on a week's pay will also apply when calculating statutory redundancy payments. In straightforward unfair dismissal claims the maximum compensatory award a tribunal can make will increase to £78,335.00.

### Director found to be an employee despite absence of remuneration

In Stack v Ajar-Tec the Court of Appeal found that, notwithstanding the fact that he had not expressly agreed that he should receive a salary, S was an employee and as such entitled to be paid for his time.

S was one of three shareholders and directors of Ajar-Tec. He devoted around 80% of his time working for Ajar-Tec over a three year period. He didn't have a written contract of employment, and in his spare time was involved in other business interests. He never asked for payment and there was nothing in the company's accounts reflecting a liability to pay him.

The Court of Appeal found that the reality of the situation was that S was an employee. He accepted an obligation to work for Ajar-Tec and it was therefore possible to imply an entitlement to remuneration in order to create enforceable and mutual obligations between the parties. S carried out work for the company and in consideration for that was entitled to receive a salary.

This case highlights the thorny issue of employment status. In determining whether someone is a worker or employee, and in turn whether they are entitled to the rights which accompany that status, the Courts will look beyond the contract or verbal agreement and consider the reality of the situation.

### Sickness Absence and Disability Discrimination

In Land Registry v Houghton and ors, the Employment Appeal Tribunal found that to exclude disabled employees who had received a formal warning in respect of sickness absence from the company's bonus scheme amounted to disability discrimination under the Equality Act.

Exclusion from the bonus scheme was automatic and managers had no discretion as to whether disability-related absence could be discounted, which the tribunal found gave rise to unfavourable treatment in consequence of disability.

Employers need to take care when dealing with disability-related absence and to consider whether it ought to be discounted for the purposes of monitoring sickness absence. Failure to do so may amount to disability discrimination.

## **Unfair Dismissal – how much investigation is “reasonable”?**

When dealing with a misconduct dismissal, in order to establish fairness an employer needs to show that they carried out a reasonable investigation before taking the decision to dismiss and that the decision was based on a genuinely-held belief that the misconduct had occurred.

What constitutes reasonable is always a question of fact and degree, and in Shrestha v Genesis Housing the Court of Appeal considered whether an employer is obliged to consider every line of defence put forward by an employee suspected of misconduct.

S worked as a floating support worker who carried out home visits to clients. Genesis noticed that his expenses claims were excessively high and the mileage claimed far exceeded the distance for the same journeys as shown on the AA website. S said that this was because he had to factor in diversions, one way systems and road closures.

Genesis carried out an investigation, however didn't ask S to provide an explanation in respect of each and every journey. Each journey was above the AA's suggested mileage and they were satisfied that this constituted grounds for dismissal.

The Employment Tribunal, Employment Appeals Tribunal and the Court of Appeal all dismissed S's claim of unfair dismissal. Genesis had carried out as much investigation as was reasonable in the circumstances.

This case should reassure employers when dealing with an investigation that it is not necessary to exhaust each line of defence put forward by an employee in circumstances where to do so would be disproportionate. The investigation will be looked at as a whole when determining whether it was reasonable.

## **Contact Us**

Natalie Abbott will be on maternity leave from 2nd March. For further information please contact the solicitor covering her matters:

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