MASSERS

EMPLOYMENT LAW UPDATE

APRIL 2015

General Election 2015: Implications for Employment Law

With the election now imminent, it is hard to ignore the political parties' election manifestoes, policy statements and pledges. Whilst the political parties have pledges relating to various areas of employment law, with regard to Employment Tribunal fees (introduced in July 2013), we have noted the main parties positions below:

Conservative:	No change.
Labour:	Abolish the Employment Tribunal Fees System.
Lib Dem:	Review fees to ensure they are not a barrier to justice.
Greens:	Reduce Employment Tribunal Fees to make them accessible to workers.
UKIP:	Silent.

Zero-Hour Contracts – Worker subjected to harassment

In *Southern v Britannia Hotels Limited and another ET/1800507/14* and Employment Tribunal found that a Zero Hours Worker was subjected to gender harassment.

Miss Southern was a waitress in a hotel owned by Britannia Hotels Limited (Britannia) and her Line Manager, Alex Nkorol, was also employed by Britannia. Miss Southern was employed under a Zero Hours Contract and alleged that from February 2013, she was subjected to harassment by Mr Nkorol for a period of approximately 8 months. Miss Southern was 22 at the time of the alleged harassment and had a history of mental health issues. Miss Southern complained about Mr Nkorol's harassment to Miss Crann, another Line Manager who simply told her to lodge a written complaint and then took no further action.

Miss Southern became unwell and went off sick from 27 October 2013. Later that month a meeting took place between Miss Southern and the Hotel Manager to discuss the bullying allegation. Miss Southern thereafter lodged a formal complaint which was investigated, however the investigation was only cursory in nature and no particulars were taken by Britannia about the harassment. Whilst the investigation in December 2013 concluded that certain "mannerisms and behaviour" by another member of staff towards Miss Southern were inappropriate, it was not substantiated and no disciplinary action was taken against Mr Nkorol. He was not warned but was asked to desist from behaviour of that type in the future.

Miss Southern issued a claim in the Employment Tribunal against both Britannia and Mr Nkorol. The Tribunal found that the allegations and incidents had on the balance of probabilities, taken place, and the conduct had been unwanted. Whilst the Tribunal noted that the harassment was not of the very worst type, there were certain aggravating features which merited a high award and Miss Southern was duly awarded £19,500. Britannia and Mr Nkorol were both found to be vicariously liable. There could be little doubt that it was reasonable for Miss Southern to regard the treatment she received as degrading and violating her dignity.

The case is clearly a useful illustration for employers of how not to conduct an investigation into discrimination allegations. The Tribunal noted that the investigation lacked vigour and integrity at every stage and that Britannia did not appear to have any interest in finding out what had actually happened, to their detriment.

Criminal Record Requests and Enforced Subject Access

Most employers want to know whether job applicants or existing employees have a criminal record. The Disclosure and Barring Service (DBS) (formerly known as the Criminal Records Bureau (CRB)) can provide such information, but does not disclose any spent convictions. Some employers have been known to circumvent this protection by insisting that applicants make a Data Protection Subject Access Record to get hold of their full criminal record (including spent convictions).

The Information Commissioners Employment Practices Code already advises against this method of obtaining details of an individual's criminal record and the DBS does not regard it as good practice as it can lead to the disclosure of spent convictions.

On the 10 March 2015 Section 56 of the Data Protection Act 1998 (DPA 1998) came into force. It is now a criminal offence for an employer to require job applicants or existing employees to obtain a copy of their criminal records by means of a Subject Access Request, and supply it to the employer in connection with their recruitment or continued employment. This is known as Enforced Subject Access. Interestingly, Section 56 of the DPA 1998 extends beyond the employment context, as it also makes it a criminal offence for any person to require another person or a third party, to make a Subject Access Request for their criminal record information as a pre-condition to providing them with, or offering to provide them with, goods, facilities or services.

The criminal offence carries an unlimited fine in England and Wales. Guidance has been published by the Information Commissioner regarding Section 56 of the DPA 1998 and includes examples of when the criminal offence will be committed.

In light of this criminal offence employers should review their employment policies and procedures immediately, to ensure that they comply with the guidance.

Contact Us

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