

# MASSERS

## EMPLOYMENT LAW UPDATE

JUNE 2015

### Zero Hours Contracts - in the spotlight again

On 26 March 2015 the Small Business, Enterprise and Employment Act 2015 (SBEEA 2015) received Royal Assent. Many of the employment provisions have yet to come into force. However, on the 26 May 2015, the SBEEA 2015 (Commencement No.1 Regulations 2015) brought the following into force:

- Further to the proposal, a ban on Exclusivity Clauses in Zero Hours Contracts;
- An amendment to the maximum penalty for breach of the National Minimum Wage to £20,000 in respect of each underpaid worker;
- Powers for the Secretary of State to make regulations prohibiting an NHS employer from discriminating against an applicant on the grounds that the applicant has made a Whistleblowing protected disclosure.

### Flexible Working - or is it?

A Company called Timewise has undertaken research which has shown that 46% people employed in the UK would like to work flexibly. However, only 6.2% of UK job advertisements with salaries of £20k or more mentioned flexible working. The CEO of Timewise, Karen Mattison MBE has recently stated that *"businesses are missing out, as they constantly fail to realise just how important flexibility is to people looking for a new role. This often results in the best talent having to trade down"*

With regard to Flexible Working, from 30 June 2014 employees with at least 26 weeks' continuous employment have the right to make a request for flexible working. The procedure to be followed is now far less prescriptive than that previously in force and only one request can be made by an employee in any 12-month period.

### Holiday Pay and Voluntary Overtime

In the Northern Ireland case ***Patterson v Castlereagh Borough Council*** the Court of Appeal in Northern Ireland held that employers should include voluntary overtime when calculating employees' holiday pay.

At first instance the Tribunal found that voluntary overtime, which the employer is not obliged to provide and the employee is not obliged to perform, should not be included in holiday pay calculations. However, the decision was appealed to the Northern Ireland Court of Appeal (there is no Employment Appeal Tribunal in Northern Ireland). The Northern Ireland Court of Appeal held that the Tribunal's determination was erroneous. That said, the Court of Appeal did not provide guidance with regard to the test the employer needs to apply in determining holiday pay and stressed that it would be a question of fact in each case.

Employers should be aware that the Judgment opens the door to the inclusion of voluntary overtime in holiday pay calculations. However, it is also important to note that decisions from the Northern Ireland Court of Appeal are not legally binding on the Courts and Tribunals of England and Wales. Nevertheless, employers should be aware of the potential ramifications of this recent decision.

## **Dress Codes and Indirect Religious Discrimination**

The Employment Appeal Tribunal (EAT) has recently held in the case of ***Begum v Pedagogy Auras UK Limited t/a Barley Lane Montessori Day Nursery*** that an Employment Tribunal was entitled to find that a limit on the length of a garment that a Muslim nursery assistant could wear to work was not discriminatory.

Ms Begum applied for a post as a Nursery Assistant. She felt obliged by her religion to wear an outer garment covering her neck to her ankle called a Jilbab. At her interview, Ms Begum was asked if she could wear a shorter garment for work as it was felt that the Jilbab she was wearing was a trip hazard.

Ms Begum brought a claim of discrimination to the Employment Tribunal and they found that the Provision, Criterion or Practice (PCP), did not put Muslim women at a disadvantage as an ankle-length Jilbab would have been acceptable. Alternatively, if the PCP did put Muslim women at a disadvantage, it was seen as justified and there was no evidence of a religious requirement to wear a floor-length garment.

As there was no error of law in its approach or perversity in its factual findings, the EAT declined to interfere with the Employment Tribunal's decision at first instance.

## **And finally ..... Employment Tribunal Fees**

The Government announced its long awaited review of the Employment Tribunal Fees and the Free Remission Scheme on 11 June 2015. The Review is expected to be completed this year and will take into account a wide range of evidence set out in the terms of reference for the Review published by the Ministry of Justice. Tribunal quarterly statistics have also been published for the period January to March 2015 and continue to show a decline in the number of Tribunal Claims being received and disposed of.

## **Contact Us**

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