

# MASSERS

## EMPLOYMENT LAW UPDATE

January 2016

### **Zero hours contracts**

We have reported on the use of zero hours contracts on a regular basis over the past 12 months and in particular the ban on exclusivity clauses prohibiting employees from working for other employers whilst employed under a zero hours contract.

From 11 January 2016 an employee's dismissal will automatically be unfair if the principal reason is that they breached an exclusivity clause in their contract; further, the two year qualifying period for bringing an unfair dismissal claim will not apply in these circumstances.

It is also unlawful to submit an employee to a detriment for working for another employer in breach of an exclusivity clause.

Acas recently published a report on Workplace Trends of 2016 which suggests that there has been a 19% increase in the use of zero hours contracts in the past 12 months. The report can be found on their website – [www.acas.org.uk](http://www.acas.org.uk).

### **Gender pay gap reporting**

Monday 9 November 2015 was Equal Pay Day - the day on which women effectively stopped getting paid for the rest of the year when compared with their male counterparts.

We expect to see the introduction of mandatory gender pay gap reporting in 2016. S.147 of the Small Business, Enterprise and Employment Act 2015 requires the government to make resolutions under s.78 of the Equality Act 2010 by 25 March 2016 requiring companies with 250 or more employees to publish information showing whether there are differences in pay between men and women in their workforce.

The reporting requirements will apply to public, private and voluntary sector employers. Reports will also need to include information about the gap in bonus payments.

While such reporting is not yet mandatory and will only apply to larger companies at least initially, it would be advisable for all employers to reflect on their wage structures at this time. In circumstances where there is a disparity in wages it will not necessarily follow that an employer will be faced with a deluge of equal pay claims. There may well be lawful reasons for the disparities which need to be taken into account, for example performance or seniority, and employers would be well placed to consider if there are any such lawful factors on which they might be able to rely.

### **National living wage**

The National Living Wage will come into effect on 1 April 2016. The initial rate is expected to be £7.20 per hour.

The National Living Wage is a premium on the national minimum wage for employees aged 25 and over. It is not to be confused with the living wage, which is a recommended rate based on

the cost of living and set by the Living Wage Foundation.

### **Monitoring of personal emails at work not a breach of right to privacy**

In *Barbulescu v Romania* the European Court of Human Rights has ruled that the monitoring of employee emails sent at work will not necessarily amount to an infringement of the right to privacy under Article 8 European Convention on Human Rights.

Mr Barbulescu used his business email account to send and receive personal messages to family, which was in breach of his employment contract. His employer discovered this accidentally and subsequently dismissed Mr Barbulescu.

Mr Barbulescu brought a claim that the Romanian courts ought to have excluded all evidence of his personal emails as it infringed his rights to privacy.

The ECHR found that his Article 8 rights weren't infringed and his dismissal was justified. The courts were entitled to look at the emails in order to determine whether his dismissal was justified. Employers are legitimately entitled to check that their employees are carrying out their professional duties whilst at work.

Employers should still be wary of considering employee's private emails and this case does not give them free reign to consider personal correspondence.

Employers should bear in mind their obligations under the Data Protection Act 1998, as well as their employees' rights to privacy, and any monitoring should be proportionate and reasonable. It may be advisable to have a transparent IT and electronic communications policy in place and to make employees aware of the same and of circumstances in which their communications may be monitored.

### **Contact Us**

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