MASSERS

EMPLOYMENT LAW UPDATE

April 2016

Apprenticeships

Employer National Insurance Contributions for apprentices aged 25 and under are no longer payable further to legislation which came into effect on 6 April 2016. This applies to employers with existing apprentices as well as those taking on new apprentices.

Gender Pay Gap

A study by the TUC has revealed that, among the 22 to 30 age group, women with a vocational qualification above GSCE level earn on average 15% less than men with equivalent qualifications. The gap reduces to 10% when looking at employees with an academic qualification above GCSE level.

Regulations are expected to come into force in around October requiring companies with over 250 employees to publish details of their gender pay gap. The subject looks set to be one of the major employment law issues of 2016. Given the potential for companies with a large pay gap to receive bad press, it is recommended that employers who will be caught by the regulations start looking at their pay arrangements now and assessing how any pay gap compares with those throughout their particular industry.

Public Sector Exit Payments

Draft regulations have been published which will require higher earning public sector employees (i.e. those earning over £80,000.00 per annum) to repay exit payments if they rejoin the public sector within 12 months of leaving. This will include redundancy payments, voluntary exit payments and ex gratia payments.

Sex Discrimination in the Workplace

Acas have published a guide on dealing with complaints of sex discrimination in the workplace – www.acas.org.uk. With inequalities in pay in the spotlight at the moment it is important that employers ensure they have policies in place to effectively manage the risk of any complaints.

Case Update: Disciplinary Action for Imposing Religious Views not Discriminatory

In *Wasteney v East London NHS Foundation Trust EAT 0157/15*, the Employment Appeal Tribunal held that an employer did not discriminate against a Christian senior manager (W) in disciplining her for imposing her views on a Muslim junior employee.

The junior employee made a complaint about W, advising that W's conduct made her feel as if she was being "groomed". Among other things, W invited her to church events; sent her religious DVDs; prayed for her during a 1:1 meeting; and told her she needed to let Jesus into her life. The Trust investigated and upheld a number of the allegations. W was given a final written warning on the basis that she had failed to maintain appropriate professional boundaries. This

was downgraded on appeal to a first written warning with a recommendation for training.

W brought claims of direct discrimination and harassment on the grounds of religion or belief. The Tribunal rejected her claims, finding that the reason for her treatment was because W's actions crossed professional boundaries and put improper pressure on a junior employee rather than because they were religious acts. The EAT upheld the decision of the Tribunal.

Case Update: Knowledge of Disability

In *Gallop v Newport City Council* the EAT found that in circumstances where Occupational Health has knowledge of an employee's disability it does not follow that knowledge can be imputed to the employer.

The EAT ruled that in dealing with a disability discrimination claim, the focus of a tribunal needs to be whether the decision-maker themselves was aware of the disability and if so, whether it influenced their decision. This was true even where there was knowledge of the fact of the disability elsewhere in the organisation.

It is possible that this matter will go to appeal. The ruling conflicts with the EHRC Statutory Code of Practice on Employment which provides that an employer cannot rely on the defence that they were not aware of a disability in circumstances where Occupational Health had knowledge of it.

Anti-Compete Clauses

BIS has announced plans to investigate whether anti-compete clauses imposed by employers are stifling innovation and acting as a barrier to entrepreneurship. The government will be launching a call for evidence asking for views on this point.

It is common practice for employers to include post termination restrictions in a contract of employment and, where these are found to be no more than is reasonable to protect a legitimate business interest, these can often be enforced through the courts. Amongst other things, restrictions are commonly used to protect confidential information and to prevent the solicitation of customers and employees. Any restrictions should be carefully drafted and negotiated when entering into a contract.

Contact Us

For further information please contact:

Natalie Abbott
Direct Dial: 0115 851 1640
E-mail: nataliea@massers.co.uk

Massers Limited t/a Massers Solicitors is registered at 15 Victoria Street No. 4227801 and also has an office in West Bridgford.

We provide specialist legal services for both private and commercial clients.

www.massers.co.uk