MASSERS

EMPLOYMENT LAW UPDATE

June 2016

What might Brexit mean for employment law?

With the country still reeling from the decision taken last Thursday, there is huge uncertainty regarding the UK's future and what Brexit will mean in practice. A number of employers have taken the decision to freeze recruitment and several have already announced that redundancies are in the pipeline. Major city banks are floating the possibility of moving hundreds of workers overseas.

Whilst the UK remains a member of the EU we are unlikely to see any immediate impact on employment legislation. Even following departure, we are still unlikely to see any immediate difference as EU Directives have been implemented in UK Regulations and will remain in force. If the government does ultimately decide to repeal aspects of employment law, unpicking it will be a lengthy process.

Long term it is quite possible that we will see a reduction in worker's rights as a result. For example, rulings from European Courts that commission and overtime ought to be included in holiday pay were unpopular with employers and it is possible we will see a return to basic pay only being paid. As well as holiday pay, general consensus among employment specialists also identifies harmonisation of terms following a TUPE-transfer and a potential cap on discrimination awards as possible areas for reform. Depending on the outcome of negotiations we may also see a number of existing EU workers no longer qualifying to work in the UK.

Employment Tribunal fees

We regularly report on the impact of employment tribunal fees on the number of claims being issued, as well as on the legal challenges to the regime. The House of Commons Justice Committee has published a report into Court and Tribunal fees which confirms that there has been a huge and significant drop in the number of claims being brought in the employment tribunal. The report cites fees as being the leading cause for this, and does not attribute the drop to the introduction of Acas Early Conciliation. The report condemns fees as having had a significant adverse impact on access to justice and recommends a substantial reduction in the level of fees.

At present, Claimant's face a fee of up to £250.00 on issuing a claim, with a further fee of up to £950.00 if the case proceeds to a full hearing.

Former City Link workers awarded 90 days' pay

An employment tribunal ordered City Link to pay protective awards of 90 days' pay to former workers, after it found that City Link had failed in their statutory duty to consult about impending redundancies.

Where an employer proposes to make 20 or more employees redundant within a period of 90 days or less, they are under a duty to inform and consult with the appropriate representatives of the affected employees. They must also notify BIS of the proposed redundancies. Where 100 or more redundancies are planned consultation must commence at least 45 days before the first

dismissal takes effect, falling to 30 days where less than 100 redundancies are planned. Consultation must be meaningful, with a view to exploring ways and means of avoiding dismissals, reducing the number of dismissals and mitigating their consequences. Failure to comply with the consultation obligations can result in a maximum protective award of up to 90 days' gross pay for each dismissed employee.

Sex discrimination in the workplace

Jose Mourinho and Chelsea Football Club settled a claim of sex discrimination brought by the club's former doctor on the steps of the tribunal this month, with the settlement figure rumoured to be seven figures.

Dr Carneiro claimed Mourinho sexually discriminated against her and forced her out of her job. The case settled moments before the full hearing, with Chelsea giving an unreserved apology.

Whilst average awards are far removed from that alleged to have been awarded in this case, discrimination claims can be costly to employers as, if successful, there is no cap on the level of compensation which a tribunal can award. The impact of bad publicity and subsequent reputational damage should also not be overlooked. Employers should ensure they have robust Equality policies in place and consider the benefit of Equal Opportunities training for staff.

Case Update: Ill health dismissals

In *Holmes v QinetiQ* the EAT held that the Acas Code of Practice on Disciplinary and Grievance Procedures does not apply to ill health dismissals.

The Code applies to all cases where an employee is facing allegations of misconduct and poor performance or has submitted a grievance.

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.

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