

MASSERS

EMPLOYMENT LAW UPDATE

December 2016

The Christmas party and employer's liability

In a timely Judgment the High Court has held that a company was not vicariously liable for an assault on an employee after the Christmas party had ended (*Bellman v Northampton Recruitment Ltd* [2016]).

Following the work Christmas party, an employee and the managing director, together with other colleagues, went to a hotel and carried on drinking. In the early hours of the morning, the MD assaulted the employee resulting in serious brain injury. The employee subsequently decided to sue the company rather than the MD personally on the basis that the company was vicariously liable for acts carried out in the course of employment (and in circumstances where it was believed the MD would not have the means to satisfy any Judgment against him).

The claim was unsuccessful, and the Judge ruled that as the assault occurred after the party and during a private drinking session the company could not be held to account. If, however, the assault had happened at the party itself, the company could well have been liable.

In assessing cases of vicarious liability, the courts look at whether the misconduct was "so closely connected" with the employment that it would be reasonable to hold the employer responsible. Factors such as the time and place are also relevant, although just because something happened outside of work does not mean an employer won't be liable.

In this particular case, the court found that the drinking session after the party was impromptu and not an extension of the party. Employees' partners were also present. The company did however continue to pay for some of the drinks and for the taxis to the hotel. Further, the assault occurred after the MD and employee began to talk about work-related matters.

The Judgment in *Bellman* is based on the specific facts of the case and does not establish that post-Christmas party drinks will be outside the scope of vicarious liability. Whilst Christmas events can be great for building morale and team spirit, companies should be minded that there is a risk that they could be held responsible for things which happen at or after the event, or where there is a sufficiently close connection with the employment.

Police – upper age limit of 35 can be justified

In *Gorka Salaberria Sorondo v Academia Vasca de Policia y Emergencias* the European Court of Justice has held that setting a maximum age of 35 for recruitment to a police force was not incompatible with the Equal Treatment Directive.

The Basque Police and Emergency Academy has a requirement that anyone wishing to become a police officer must be under 35 when applying. The ECJ found that this practice did not amount to indirect age discrimination as there was a genuine occupational requirement for it. The ruling cited "the possession of particular physical capabilities" to be "one characteristic relating to age" and took into account the fact that the role could require the use of physical force. Consideration was also given to the years of service that could be accomplished following recruitment.

"Gig economy" subject to government review

The government has commissioned a review into the so called "gig economy" and its effect on workers' rights. A team of four experts, led by Mathew Taylor, Chief Executive of the Royal

Society for the Arts, will tour the UK and investigate the impact of business models such as Uber and Deliveroo.

This has been sparked by the increase in short-term, casual work which has been very much in the public eye, with people being denied access to the minimum wage, sickness or holiday pay amongst other rights.

The review will address questions around job-security, pension, holiday and parental leave rights with the team talking to businesses and workers across the UK.

The Autumn Statement last month mentioned the impact the gig economy is having on budget revenues, as casual work and self-employment reduce the amount of tax being paid.

Advisory fuel rates from 1 December 2016

HMRC has published guidance on the advisory fuel rates to apply to employees using a company car from 1 December 2016. The previous rates can continue to be used throughout December.

The guidance can be found at <https://www.gov.uk/government/publications/advisory-fuel-rates>

Final draft of gender pay gap regulations published

The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 are due to come into force on 6 April 2017. The final draft regulations have now been published, with some amendments made to the previous draft following consultation. Points of note are:

- Employees on maternity or sick leave will be excluded from the hourly pay comparison.
- Partners and LLP members will also be excluded.
- Further clarification as to the definition of bonus pay and a requirement to publish both the mean and median figures for men and women.

The first reports will be due by 4 April 2018 (and will look at pay on the “snapshot date” of 5 April 2017). These will be published for 3 years on the employer’s website as well as on a government website. The regulations will apply to all non-public sector employers with at least 250 employees.

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