

# MASSERS

## EMPLOYMENT LAW UPDATE

November 2016

### **“Gay cake” decision**

In *Lee v Ashers Baking Company* the Northern Ireland Court of Appeal considered whether Mr and Mrs McArthur, the owners of a bakery, discriminated against Mr Lee in refusing to decorate a cake with a picture of Bert and Ernie and the slogan “Support Gay Marriage”.

The McArthurs are devout Christians and believe that gay marriage is sinful. They acknowledged that this was the reason they cancelled the order.

The Court of Appeal held that this amounted to direct discrimination. They did not accept that the McArthur’s right to free speech was being infringed. It would not follow that by icing a cake they were themselves expressing personal support for the slogan. Whilst they were entitled to refuse to ice cakes bearing any religious or political message, they could not refuse to ice a particular cake on the basis that it conflicted with their own views.

### **Right to rest breaks infringed even though not specifically requested**

In *Grange v Abellio London* the EAT held that it is not necessary for an employee to request a rest break before claiming to have been refused one.

Grange was contracted to work eight and a half hour shifts, which included half an hour for lunch. He was told that in practice, he should work eight hours and leave half an hour early.

Under the Working Time Regulations, workers are entitled to a rest break of 20 minutes per six hours worked. He claimed to have been refused a rest break, and at first instance the tribunal found against him on the basis that he hadn’t actually asked for a break.

The EAT overturned the decision and said it was not necessary for him to have made a request.

This case demonstrates that an employer cannot simply remain passive when it comes to the issue of breaks. In practice, it is quite common for workers to work through their breaks if they feel they have too much work to get done, and it has been argued that this is their decision. It appears unlikely that a tribunal would support this view as an acceptable defence from an employer.

### **Amazon drivers**

Last month we reported on the tribunal ruling that Uber drivers were workers rather than self-employed. Delivery companies such as Hermes and Deliveroo have also received bad press as a result of their contractual arrangements and working conditions.

Amazon is the latest company to hit the headlines over alleged treatment of its delivery drivers. The BBC has reported that Amazon requires agency drivers to be self-employed, meaning they are not entitled to the national minimum wage or rights such as sick pay or holiday pay.

An undercover reporter took a job working for Amazon and claimed that he worked more than the

legal 11 hour daily limit imposed on delivery drivers and was paid a fixed rate of £110.00 per route completed each day. After deductions for things such as optional van hire and insurance, his hourly rate worked out at just £2.59. It is alleged that drivers often work “illegal” hours and receive less than the national minimum wage.

When looking at the reality of the working relationship, expert opinion is that as the drivers don't determine their own routes, days of work or rest breaks they ought to be classed as workers rather than self-employed. This is all denied by Amazon.

### **2016 Autumn Statement**

The National Minimum Wage (NMW) and National Living Wage (NLW) will be increased from 1 April 2017 as below:

NLW (aged 25 and over) from £7.20 to £7.50

Standard adult NMW (age 21 – 24) from £6.95 to £7.05

Development NMW (age 18 – 20) from £5.55 - £5.60

Young workers NMW (age 16 – 17) from £4.00 to £4.05

Apprentice NMW rate (age under 19 or in the first year of an apprenticeship) from £3.40 to £3.50

From April 2017, there will be restrictions on the benefits which qualify from tax and NICs relief if provided through a salary sacrifice arrangement. Those which will continue to benefit are:

- Enhanced employer pension contributions to registered pension schemes;
- Childcare benefits;
- Cycles and cyclists' safety equipment provided under the cycle to work scheme;
- Ultra low emission cars.

Existing arrangements will be protected until April 2018, or April 2021 for cars, accommodation and school fees.

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