

MASSERS

EMPLOYMENT LAW UPDATE

January 2017

Employment Law Update – January 2017

Employment Status – Keeping on track

An Employment Tribunal has found in the case of *Dewhurst v City Sprint UK Limited*, that a City Sprint bicycle courier was a worker, rather than being in business on her own account. Ms Dewhurst was a courier engaged by City Sprint. Following the successful completion of a two-day recruitment process she was presented with a 'confirmation of tender to supply courier services'. The document purported to treat her as a self-employed contractor. Ms Dewhurst was then asked to electronically acknowledge a number of key terms which sought to make clear that she was under no obligation to provide services and City Sprint was under no obligation to provide work; that she could use substitute to provide the work; if she did not work she did not get paid; and that she did not receive an entitlement to holiday, maternity or sick pay. Ms Dewhurst was paid by the job and City Sprint automatically calculated the payments due, which were paid weekly in arrears after deductions.

In assessing Ms Dewhurst's employment status, it was necessary for the Tribunal to look at the reality of the situation. Once she was 'on circuit' and ready for work she would log into City Sprint's City Tracker tracking system and log out at the end of the day. Ms Dewhurst was expected to work when she said she would, was directed by a controller (through the means of radio and mobile phones), wore a uniform and even told to smile !

The Tribunal found that Ms Dewhurst and City Sprint's couriers had little autonomy to determine the manner in which their services were performed and the Tribunal agreed that Ms Dewhurst had been recruited by City Sprint to work for it and was integrated into the business.

Ms Dewhurst therefore succeeded in her claim for two-days paid holiday

Ms Dewhurst said she was 'delighted' with the Tribunal decision 'as it has set a legal and moral precedent that others can use to make similar claims'.

It is not clear whether City Sprint will appeal the decision, but said it was reviewing the ruling 'in detail'.

This is the first of four employment status cases being brought in the London Central Employment Tribunal against courier companies. The judgment in *Dewhurst* could have far reaching implications for the so-called 'gig-economy'. You may recall from our December newsletter that the Government have commissioned a review into the 'gig-economy' and its effect on workers' rights.

The Independent Workers' Union of Great Britain said that the case serves as a warning to other companies that they are going to have to give their workforce the rights and protection owed to them according to the true working relationship

Holiday Pay

Last year the Court of Appeal held in the case of *British Gas Trading Limited v Lock and another (Supreme Court)* that the Working Time Regulations (WTR's) can be interpreted to require the inclusion of contractual results-based commission in holiday pay. It is expected that British Gas will appeal to the Supreme Court on this very important issue.

The decision is not just confined to British Gas as other employers are likely to face claims from employees over the level of their holiday pay. Such employees will have three months from the

date of the last deductions to bring a claim. There is, however, a limit on back pay of 2 years which can help assess potential liability.

If a case is brought against you, you'll need to take advice as there are a number of options for working out an "average week's pay".

Minimum Wage raise

On 1 April 2016 the National Living Wage was introduced for all working people aged 25 and over. The current rate is set at £7.20 per hour and in April 2017 it will increase to £7.50 per hour this April.

The National Minimum Wage for those aged under 25 still applies and from the 1 April 2017 the rates will increase as follows:

- Employees aged 21 to 24 years old £7.05p per hour (up from £6.95)
- Employees aged 18 to 20 years old £5.60p per hour (up from £5.55)
- Employees aged 16 to 17 years old £4.05p per hour (up from £4.00)
- Apprentices (either under 19 or 19

and over who are in the first year of apprenticeship) £3.50p per hour (up from £3.40).

Modern slavery – Two brothers jailed.

Two brothers pleaded guilty at the Nottingham Crown Court earlier this week to recruiting approximately 18 people and trafficking them from Poland to the UK. Erwin and Krystian Markowski hired "spotters" in Poland to identify vulnerable and unemployed individuals and offered them travel, work and accommodation. The victims were brought to Nottingham where their passports were taken from them and they were given squalid, overcrowded accommodation to live in. There were then given warehouse work at Sports Direct, via an employment agency. Whilst the prosecution accepted it was not "forced labour" they said the workers had "very little choice".

The brothers used their victims travel documents to open bank accounts and controlled their finances by retaining their bank cards. The victims were only given around 1/3 of their weekly wages and the brothers kept the difference for themselves which totalled around £35,000.

The victims were controlled by the brothers who took control of their finances, communications and sometimes threatening and being violent.

The brothers pleaded guilty at Nottingham Crown Court to conspiracy to arranging travel with the view to exploitation between January 2015 and February 2016 and conspiracy to commit fraud and they were sentenced to 6 years each for the exploitation and 2½ years for the fraud.

Whilst this is a criminal case the Modern Slavery Act 2015 ("the Act") requires all businesses with a turnover of 36 million or more to disclose each year what action they have taken to ensure that there is no modern slavery in their business or supply chains. Modern slavery is a serious crime and it is important that businesses are aware of their obligations under the Act.

Contact Us

For further information please contact:

Laura Whitworth

Direct Dial: 0115 851 1640

E-mail: lauraw@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

This publication is intended for general guidance and represents our understanding of the relevant law and practice on the date it is published. Explicit advice should be sought for specific cases; we cannot be held responsible for any action (or decision not to take action) made in reliance upon the content of this publication.