

# MASSERS

## EMPLOYMENT LAW UPDATE October / November 2017

### **Employment Tribunal's Fees Refund Scheme announced**

In October, the Government announced the first stage of a refund scheme for Employment Tribunal fees following the Supreme Court's Judgement in July that the fees regime was unlawful. A press release from the Ministry of Justice (MoJ) and HM Courts and Tribunals Service (HMCTS) states that applicants will be contacted to apply for a refund. Alternatively, applicants can pre-register their claims by emailing [ethelpwithfees@hmcts.gsi.gov.uk](mailto:ethelpwithfees@hmcts.gsi.gov.uk).

Successful applicants will also receive interest at 0.5% calculated from the date of the original fee payment up to the refund date. It is understood that the MoJ and HMCTS are working with Trade Unions in relation to large multiple claims.

According to the Government, the cost of the Tribunal fee refunds is estimated to be £33 million, including interest.

### **Unpaid Internships – Another Form of Modern Slavery?**

A new survey undertaken by a YouGov poll of nearly 5,000 people found that 42% were strongly in favour of banning unpaid internships that last 4 weeks or more. Further, 72% advocated a change to the existing law.

Unpaid internships were likened to a form of modern slavery during a Lords debate on whether to ban them. On Friday, 3<sup>rd</sup> November 2017 Lord Holmes' of Richmond private members bill was debated for the first time and seeks to prohibit unpaid internships of more than 4 weeks. The bill will require Government backing to succeed.

Lord Mitchell has said that whilst interns were "not owned by anyone" and could quit, not receiving payment for their labours could be equated with slavery.

There has been a stark rise in unpaid internships since 2010 and Lord Holmes' said that existing laws are clearly not working as more and more professions and trades require unpaid work experience before securing a job.

Commenting on the latest survey results, Chair of the Social Mobility Commission Alan Milburn described unpaid internships as a "modern scandal", suggesting that "access to them tends to depend on who, not what you know". Whilst entry into many professional careers often requires candidates to have completed internships a recent study has also suggested unpaid internships damage the long-term pay prospects of graduates.

We will continue to keep you updated regarding the debate.

### **In Otero Ramos -v- Servicio Galego DDE Saude, the Court of Justice of the European Union (CJEU), held that failure by an employer to conduct an appropriate risk assessment for a breastfeeding employee amounts to sex discrimination.**

In this case the Claimant was a nurse who worked in a hospital's accident & emergency department. Her employer undertook a risk assessment for her as a breastfeeding mother and concluded that her work was 'risk-free'. The Claimant's request for an adjustment to her working pattern on account of breastfeeding was declined and she brought a claim for sex discrimination.

The CJEU held that if a breastfeeding mother can show that an assessment was either defective or not undertaken, it gives rise to a *prima facie* case of discrimination.

In such cases as it is open to an employer to show that the required risk assessment was undertaken in line with the relevant directive.

In the event of a claim an Employment Tribunal would need to determine whether the risk assessment complied with the requirements of the relevant EU Directive.

### **Guidance for small businesses on the new General Data Protection Regulations (GDPR)**

The new General Data Protection Regulations are due to take effect from 25<sup>th</sup> May 2018 and are the result of the EU's legislative bodies, national data protection authorities and the EU member states preparing an updated and more harmonised data protection law. The Information Commissioner's Office (ICO) has issued new guidance for small businesses on the GDPR and a new telephone advice line to assist small businesses in complying with the new provisions under the regulations, along with other general ICO enquiries.

If you are a business owner, it is very important to prepare for the new regulations. Steve Wood, head of policy delivery at the ICO has said that "while many of the principles in the new legislation are much the same as those in the current data protection act, there are important new elements, and some things will need to be done differently".

Information commissioner, Elizabeth Denham has also said that the ICO appreciates the unique challenges faced by small businesses in this area, suggesting that they often have "less time and money to invest in getting it right and are less likely to have compliance teams, data protection officers or legal experts to advise them of what to do".

The GDPR will introduce several new concepts and approaches, as it is designed to be more foolproof and forward-looking than the current data protection directive.

Time is of the essence - if you run a business and are uncertain what you should be doing now, please contact us for advice.

### **Contact Us**

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