MASSERS

EMPLOYMENT LAW UPDATE

April/May 2018

Gender Pay Gap reporting reveals significant disparity in pay

The deadline for large private and public sector employers to publish details of their gender pay gap (GPG) was on 4th April and the statistics have revealed a national median pay gap of 9.7%.

The GPG varied between sectors, with the finance sector faring badly with a gap of 35.6%. At the other end of the scale, the accommodation and food services sector had an average gap of just 1%.

The public sector reports revealed that on average, men are paid more than women in 90% of public bodies to include the NHS, universities and local and central government departments. Figures show that on average, women working in the public sector receive 14% less than their male colleagues.

The Equality and Human Rights Commission has confirmed that its first GPG investigations will begin in June. The body has the power to investigate companies who failed to publish their data, and it has been revealed that 1,500 missed the deadline of 4th April. These companies could be named and shamed and continued non-compliance may result in unlimited fines.

Date of Notice of Termination

In *Newcastle Upon Tyne NHS Trust v Haywood*, the Supreme Court held that notice of termination was only effective when it was actually brought (or ought reasonably have been brought) to the recipient's attention.

H's role was made redundant and she was served with notice of termination. The letter was sent to her on 20th April. She was on holiday at the time and only read the letter on 27th April. The letter provided for 12 weeks' notice.

H turned 50 on 20th July. If notice was deemed to have been served on 20th April she would have benefited from a much lower pension on redundancy than if it was found to have been served on the 27th April when she actually read it.

The Supreme Court ruled that the Notice of Termination was effective when read, meaning that H was entitled to the higher pension.

It is of note that in this case the employment contract was silent as to the mechanics of when notice was deemed to be given. Where notice is to be given in writing, employers may wish to ensure that the contract deals with when it will be deemed to have been received.

No variation of contract where employees continued to work

In *Abrahall and Ors v Nottingham City Council and anor*, the Court of Appeal has held that, in circumstances where employees continued to work following a pay freeze, they did not agree to a variation of contract.

Employees at NCC had a contractual entitlement to an annual pay increase. In 2011, NCC imposed a 2 year pay freeze and employees protested via their Trade Unions. Industrial action

wasn't taken although opposition to the proposal was communicated at several meetings.

Two years later in April 2013 NCC announced a further freeze and several hundred employees brought claims for unlawful deductions from wages on the basis of their contractual right to a pay increase.

The claimants were on different contracts depending on when they joined the Council and were split into three distinct groups depending on which terms they were subject to. The Tribunal Judge found that on construction of their contracts, there was not a contractual right to incremental pay increases and the claims must fail. The Judge also considered whether continuing to work after the 2011 freeze could be inferred as acceptance to a variation of contracts and found that it could not.

The decision was appealed to the EAT, who found that one of the three groups was contractually entitled to incremental pay increases but that the other two groups were not. The Judge agreed with the ruling at first instance that they had not agreed to a variation by continuing to work.

The Council then appealed to the Court of Appeal and the two other groups of employees cross appealed. The Court of Appeal dismissed the appeal and allowed the cross appeal, finding that all three groups were entitled to a contractual pay increase and had not agreed to a variation by continuing to work.

Whilst each case will be assessed on its particular facts, the Court of Appeal found that continuing to work cannot be found to constitute acceptance of new terms if there is any other explanation for it. Further, objecting via the union rather than individually may be enough to deny any inference of acceptance.

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