MASSERS

EMPLOYMENT LAW UPDATE

July 2018

Acas confirms rise in claim notifications

Acas has confirmed that the number of claimants notifying them that they were considering legal action rose from 1700 to 2200 per week in the 12 months to 31st March 2018. The number of claims issued following notification rose by 39% over the same period. Sir Brendan Barber, Acas Chair, has attributed the rise to the abolition of tribunal fees in July last year.

Successful appeal revives employment contract

In *Patel v Folkestone Nursing Home Ltd* the Court of Appeal held that following a successful appeal against dismissal an employee will automatically be reinstated.

In this case, P was a care assistant. He was dismissed following two allegations of misconduct and he appealed. He subsequently received a letter which said his appeal had been successful but which failed to confirm whether one of the allegations had been overturned. P refused to return to work and brought a claim for unfair dismissal.

At first instance, F argued that C had not been dismissed as the fact of the successful appeal meant the contract was revived. The tribunal rejected this argument and held that the C had not automatically been re-instated following the successful appeal as his contract made no provision for such an eventuality.

This judgment was overturned by the Court of Appeal, who confirmed that in the absence of any express provision to the contrary, a successful appeal acts to extinguish a dismissal and C could not claim to have been unfairly dismissed.

On a practical level when dealing with an appeal, it is advisable to make sure the outcome letter addresses the decision reached in respect of each ground of appeal. If overall the appeal is successful advising the employee that the dismissal no longer stands may help to eliminate any uncertainty.

Sexual harassment in the workplace

The Women and Equalities Commission has published its report on sexual harassment in the workplace which makes a number of recommendations aimed at increasing the protection afforded to victims and restricting the use of “gagging clauses”.

The recommendations include the imposition of a mandatory duty on employers to protect employees from sexual harassment at work; a duty for public sector employees to conduct a risk assessment as regards sexual harassment and to take steps to mitigate any risks; reintroducing third party harassment to render employers liable if they fail to take reasonable steps to prevent third parties harassing their employees; extending the time limit to bring a claim; enabling tribunals to award punitive damages whereby employers may have to bear the employee’s legal costs in a successful case; and limiting the use of confidentiality clauses in settlement agreements.

Pimlico Plumbers – employment status

In *Pimlico Plumbers v Gary Smith* the Supreme Court considered whether S was a worker, and

entitled to the rights attached to worker status, or rather an independent contractor.

The issue of worker status was relevant to claims for rights under the Employment Rights Act 1996, holiday pay, unlawful deductions from wages and disability discrimination.

The Court considered not only the contract between the parties, but also the intricacies of the working relationship on a day to day basis. S was able to reject work and bore some financial risk, which was indicative of self employment. He was however required to do the work himself and only had a qualified right to swap a shift with another Pimlico Plumber; was required to wear a uniform; normally had to be available to work at least 40 hours per week; and was subject to restrictive covenants including a three month non-compete restriction. P exercised a large degree of control over S and ultimately the Court made a finding of worker status in line with the previous decisions of the tribunal, EAT and Court of Appeal.

The judgment is one of the latest in a long line of claims regarding employment status. Employers should consider the basis on which they require someone to work in practice, as tribunals will look beyond the position as stated in the contract.

Sleep-in workers only entitled to National Minimum Wage when awake

In *Royal Mencap Society v Tomlinson-Blake; Shannon v Rampersad (t/a Clifton House Residential Home)* the Court of Appeal held that workers on sleep-in shifts were only entitled to the National Minimum Wage (NMW) when they were actually awake for the purpose of working.

The case considered care workers who were required to sleep at or near to their place of work and be available to provide assistance if required. It found that they were only available to work and not actually working during this period. They were only entitled to NMW for the time they were awake for the purpose of working. The main premise of the arrangement was that the workers would sleep unless called upon.

Contact Us

For further information please contact:

Natalie Abbott
Direct Dial: 0115 851 1640
E-mail: nataliea@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.
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