

MASSERS

EMPLOYMENT LAW UPDATE

September 2018

Tribunal claims continue to rise

The Ministry of Justice has published statistics for the second quarter of 2018. Compared to April-June last year (and at which time tribunal fees remained in force), there has been an increase in single claims of 165%.

The largest awards tended to be made in disability discrimination claims, with an average award of £30,700. The average unfair dismissal award was £15,007.

So what does this tell us? Firstly, fees appear to have acted as a deterrent to potential claimants. Secondly, that there is a very real risk of a claim in circumstances where preventative action isn't taken at an early stage. Whilst there is a qualifying 2 year period for unfair dismissal, protection from discrimination is a day one right and a review of existing grievance and equal opportunities policies and procedures is advisable. Legal advice at an early stage and prior to action such as dismissal may reduce the risk of litigation and the inherent financial and reputational risk that it carries.

Employment references

Employers have a tendency to err on the side of caution when it comes to providing a reference, with an increasing number only providing job titles and dates of employment alongside a standard disclaimer.

Acas have released new guidance on employment references to include problems with references and whether an employer can give a bad reference, which can be accessed via their website: www.acas.org.uk.

When is it safe to rely on notice?

In *East Kent Hospitals University NHS Foundation Trust v Levy* the Employment Appeal Tribunal (EAT) considered whether the act of giving notice necessarily constitutes an unambiguous act of resignation.

C had an administrative role in the Trust's records department and was conditionally offered a new role in the radiology department. She submitted a letter giving one month's notice.

Unfortunately for C, the conditional offer was withdrawn and she sought to retract her notice. The Trust refused to agree this and C brought a claim of unfair dismissal.

The EAT upheld the employment tribunal's ruling that the Trust could not rely on the earlier resignation. It was ambiguous, as it was tendered in expectation of another role which subsequently fell through. The focus needed to be on C's intentions at the time she wrote the letter.

Of course it does not necessarily follow that an employer cannot rely on an employee's notice and each case must be determined on its facts. However, the wider circumstances and not just the wording of the resignation will fall to be considered. If at the time of receiving notice there is any uncertainty as to intention, caution should be exercised prior to acceptance.

MPs recommend extension of gender pay gap reporting requirements

A departmental select committee has published a report considering the impact and experience of the first year of gender pay gap reporting obligations. At the moment, only large companies with 250 or more employees are caught by the requirements. The report recommends this be rolled out to all companies with 50 employees by 2020. The report also recommends extending the reporting requirements to disability and race by 2020.

Other recommendations include requiring employers to provide narrative alongside their gender pay statistics together with an action plan setting out how any gap should be addressed and against which future statistics would be judged.

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