MASSERS

EMPLOYMENT LAW UPDATE

January 2019

Anonymity orders
The employment tribunal publishes an online register of judgments. In *Ameyaw v PWC* the Claimant asked the tribunal to remove a Judgment which criticised her behaviour at an earlier preliminary hearing. The EAT held that the tribunal did not have the power to remove the judgment and the power to exclude written reasons from the register was designed for cases of national security.

Extension of redundancy protection
The Government has published a consultation paper on extending redundancy protection for women and new parents.

At the moment, women on maternity leave are given priority where there is suitable alternative employment available in a redundancy situation. Proposals are being considered to extend this protection to include women who have told their employer they are pregnant and those who have returned to work from maternity leave in the last six months.

It is also proposed that protection be extended to include those on adoption leave, shared parental leave and longer periods of parental leave.

Employment status and the right of substitution
In *Chatfeild-Roberts v Phillips & Universal Aunts Limited*, the EAT held that the right to appoint a substitute can be consistent with employment status.

The Claimant worked as a live-in carer for the First Respondent's uncle for three years. She was placed there by an agency, the Second Respondent. She was paid directly by the First Respondent; after the first six months she stopped preparing invoices and was paid by standing order. Whereas other agency staff worked on a rota, the Claimant didn't. On her days off and when on holiday, she asked the Second Respondent to provide a substitute. After the role came to an end, she brought a number of claims and the tribunal held that she was employed by the First Respondent. The First Respondent appealed.

The EAT was satisfied that the Claimant was employed by the First Respondent. When considering the right of substitution, it found the right to appoint a substitute was only exercised at times when the Claimant was unable to work and as such was consistent with personal performance and employee status.

Wellcome Trust considering four day week
The Wellcome Trust has announced that it is considering trialling a four day working week. If it does, 800 head office staff will be affected. The rationale behind the move is based on findings that a reduction in hours (but not in salary) has a positive impact on productivity and work-life balance. Others who have implemented such schemes claim to have seen a healthier workforce and less time lost to sickness absence as a result. It is thought that the benefits to workers of having more time to pursue a new hobby or training, or spend time with family, are passed on the work place.

Studies suggest that, when given a finite period in which to work, people tend to be more productive and spend less time procrastinating. On the other hand, there are fears that others may feel under increased pressure, whilst some might view the time off as a "free" day and wouldn't work any harder on the 4 days.

The TUC has previously advocated a move to a four day week in sectors where much of the work is being replaced by technology, arguing that the benefits ought to be shared with the workforce as a whole.

Knowledge of disability

In *Lamb v The Garrard Academy* the EAT considered the point at which the employer had knowledge of the Claimant's disability and accordingly when the duty to make reasonable adjustments arose.

The duty to make reasonable adjustments only arises once the employer has actual or constructive knowledge of the disability (i.e. when they knew, or ought reasonably to have known). "Knowledge" means that they know of the physical or mental impairment; that it has lasted or is likely to last 12 months at least; and that it sufficiently interferes with the individual's normal day-to-day activities to amount to a disability.

The Claimant went off sick in February 2012. In March 2012 she submitted a grievance about incidents at work which had led to her absence, and in July 2012 she advised her employer that she suffered with PTSD stemming from an event in her childhood. In November 2012, Occupational Health assessed the Claimant as suffering with reactive depression which they believed probably dated back to September 2011 (so it had lasted more than 12 months).

The tribunal found that the Respondent had actual knowledge of the Claimant's disability from November 2012 and at which time the long-term element of the definition was satisfied. It held that it was only at this point that the duty to make reasonable adjustments arose.

The Claimant appealed and the EAT overturned this decision. It found that the Respondent had actual knowledge of the Claimant's disability from July 2012 and the duty to make reasonable adjustments arose at that time. The EAT also considered the matter of constructive knowledge. It commented that, had a referral been made in March, occupational health may have found that the reactive stress was triggered by a workplace issue, which the employer could have reasonably been expected to deal with fairly quickly and in which case, knowledge of disability may not have arisen. However, by the time the referral was made in July the Claimant had already been off for four months and it would be reasonable to conclude that the matter may not be resolved prior to September and at which time the duration element of the definition would have been satisfied.

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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