Thompsons ER

Employment Law Update

November 2009

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SOLICITORS

Introduction

- Legislative changes
  - April 2009
  - October 2009
- Case law update

Legislative changes Apr 09

- Repeal of statutory dispute resolution procedures
- Where either letter informing employee of disciplinary action, a disciplinary meeting or dismissal occurs on or after 6 April 2009 old procedures no longer apply
- ACAS Code of Practice
- Dismissal will no longer be automatically unfair

Legislative changes Apr 09

- Grievances – ET claims will no longer be barred where have not raised a grievance and waited 28 days
- If don’t follow new ACAS COP compensation can be increased or reduced by up to 25%
- Transitional provisions for continuing acts
- ET Deadline 3 months less one day from dismissal or other act.

Legislative changes Apr 09

- Right to request flexible working extended to those with children aged 16 and below
- Registration scheme for East European workers extended to 30 April 2011
- Statutory annual leave entitlement under WTR increased to 5.6 weeks
- S.174 of TULR (Consolidation) Act 1992 amended in light of Aslef –v- UK

Legislative changes Oct 09

- From 1 Oct 09 cap on a week's pay increased from £350 to £380 (redundancy pay, basic award etc)
- Revised ACAS COP on time off for TU activities comes into force
  - Pay for time off should have 'due regard' for shift premia, bonuses & commission
  - Confidential space should be provided to discuss disciplinary and grievance issues

Legislative changes Oct 09

- From 12 October 2009 the Safeguarding Vulnerable Groups Act 2006 provides for a single central vetting system and register
- Consultation on trade union blacklisting – regulations may be implemented autumn 2009?

The Equality Bill (2)

- Brings together separate pieces of legislation under 1 Act
- Clarification of disability discrimination
- Introduces dual discrimination
- Associative and perception discrimination
- Extends the definition of harassment

The Equality Bill (2)

- Extends to the duty on public authorities and includes new socio economic duty
- Secrecy clauses
- Positive action
- Tribunal recommendations
- Equality Reporting
- Public Procurement

Case law update

- Representation by a lawyer at disciplinary hearings: Kulkarni v Milton Keynes Hospital NHS Foundation Trust & R (on the application of G) v Governors of X School and anor

- Unfair dismissal – date of termination when communicated by letter: Gisda Cyf v Barratt

Case law update

- Unfair dismissal – date of termination was when employer stopped employee's pay: Kirkless Metropolitan Council v Radecki

- TUPE transfers – new employer must precisely honour existing terms and conditions unless impractical (eg share options): Tapere v South London & Maundley NHS Trust

Case law update

- Employees on long term sick leave are entitled to accrue holiday leave: HMRC v Stringer, Ainsworth & others

- Employees have the right to take holidays at another time if they are sick during booked holidays Pereda v Madrid Movilidad SA

Case law update

- Length of service as one of a number of redundancy criteria was justified under the age discrimination regulations: Rolls Royce plc v Unite the Union
- The default retirement age (DRA) of 65 was justifiable: R (Age UK) v Secretary of State for Business Innovation and Skills

Case law update

- Associative discrimination covered by the DDA EBR Attridge Law & ors v Coleman
- A belief in climate change can be a philosophical belief Grainger PLC v Nicholson
- Agenda for Change in the NHS was a non-discriminatory job evaluation system: Hartley & others v Northumbria Healthcare NHS Foundation Trust & others

Further sources of information

- Thompsons e-training modules and LELR
  - www.thompsons.law.co.uk
- ACAS website
  - www.acas.org.uk
- Worksmart (TUC)
  - www.worksmart.org.uk
- Dept for Business, Innovation & Skills
  - www.bis.gov.uk