

Nockolds are delighted and proud to announce that our Employment Team has yet again been recommended by the prestigious Legal 500 in its 2007 edition for their expertise which places the team as leaders in employment law in the South East of England.

15% Rise in Employment Tribunal Claims

Recent statistics have confirmed that there was a new record high in the number of Employment Tribunal claims issued in 2006/2007 which totalled in excess of 130,000 claims. This represents a 15% rise on the previous year. The Tribunal Service further recorded a 100% rise in sex discrimination claims. These statistics highlight the importance for employers to keep updated on employment law developments to avoid costly tribunal claims.

Statutory Annual Leave is Extended



Under the Working Time Regulations 1998 all workers are entitled to a minimum of 4 weeks paid annual leave in each leave year, which is 20 days for workers working a standard five-day week. However, there is no statutory right to paid leave on the 8 bank and public holidays.

Consequently, some employers currently include the 8 bank holidays as part of the worker's 20 day annual leave entitlement. Some employees are, therefore, only entitled to take 12 further days off a year.

Under the Working Time (Amendment) Regulations 2007, the minimum statutory annual leave entitlement is to be increased from 4 to 5.6 weeks, which equates to an increase of 8 days per year for a five day a week worker. This increase will be introduced in two instalments. From 1 October of this year, an employee's entitlement will increase from 20 to 24 days and on 1 April 2009, from 24 to 28 days. Part-time employees are entitled to a pro-rata amount of additional leave. It is anticipated that these changes will benefit up to 6 million workers.

However, whilst there is an increase to the annual entitlement, a worker still cannot insist that he take a bank or public holiday as part of his holiday entitlement. Workers not contractually entitled to take leave on such days must make requests in the normal way and an employer is entitled to refuse an employee to take a bank holiday off.

Lapsed Warnings Cannot be Relied Upon

The Employment Appeal Tribunal has recently confirmed that an employer is not entitled to rely on any lapsed warning in respect of a decision to dismiss an employee. In that case, five employees were disciplined for not being at work when they should have been. Four of them were given penalties short of dismissal but one individual was dismissed. The employer attempted to justify the dismissal in that the dismissed employee had already had a warning for not being at work. This warning had been given 13 months earlier, even though the disciplinary procedure provided for it to lapse after 12 months.

The EAT held the dismissal to be unfair. This is a reminder to employers that once a warning has lapsed it cannot be relied upon by an employer.

Increase in National Minimum Wage

From 1 October 2007 the national minimum wage for adults increases to £5.52, for employees aged 18-21 to £4.60 and for young workers under 18 to £3.40.

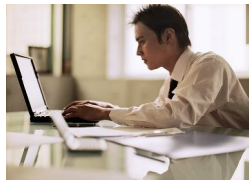


Statutory Dismissal Procedure Must be Followed

Under the Statutory Dismissal and Disciplinary Procedures, the minimum requirements must be followed to ensure that a dismissal is not automatically unfair. A recent case highlighted the importance of ensuring that employer's own disciplinary procedures satisfy the basic 3-step statutory dismissal procedure and that they do not impose more onerous requirements.

In the case of *Masterfoods v Wilson*, following his dismissal, an employee was informed that if he wished to appeal he must give written grounds for his appeal within five working days. Under the Statutory Procedure, it is not necessary for an employee to request an appeal in writing, nor give the grounds for the appeal, all that is required is that the employee notify the employer that he wishes to appeal. The employee, in *Masterfood*, did not give written grounds as requested within the required time limit and the employer therefore refused to hear the appeal. The dismissal was held to be automatically unfair since Step 3 of the Statutory Procedure, which deals with the right of appeal, simply states that if an employee wishes to appeal the decision and informs the employer of his wish to appeal, the employer must invite him to attend a meeting.

Agency Workers Unlikely to be 'Employees'



There have been a significant number of cases in recent years dealing with the issue of whether agency workers are "employees" of the agency or of the end user, thus giving them various statutory rights, in particular, the right to claim unfair dismissal and redundancy payments. Recent case law has gone some way to clarify the position, which is encouraging news for employers using agency workers.

The Courts have recently held that it will be very difficult for an agency worker to claim that he is an 'employee' of the end-user. Indeed, even if an agency worker has worked exclusively for an end-user for a number of years, that does not necessarily mean that the agency worker has acquired employment status. As a result of these recent cases, the agency worker now has a high hurdle to overcome to persuade a tribunal that he was an 'employee'.

Alcohol is no Defence to Employee

A recent case has clarified the rules concerning harassment on the grounds of sex. An employer dismissed an employee for sexually assaulting a colleague by grabbing her breasts during the course of an after-work function. The employee claimed that he had been unfairly dismissed as his employer, when investigating the allegation, failed to consider that this was a drink-fuelled occasion, and that there had been much light hearted banter, some of a sexual nature. He argued that his employer was obliged to consider the context of his behaviour.



The Employment Appeal Tribunal disagreed. It held that if the employee had, indeed, sexually assaulted his colleague, no amount of banter, lewd comments by others or the amount of alcohol consumed could justify his actions. The employer was fully entitled to dismiss the employee.

If you would like to discuss any issues raised in this Update or any other employment related matter please do not hesitate to contact our Employment Team on:-
01279 755777 or email employment@nockolds.co.uk

Market Square, Bishops Stortford
Sawbridgeworth
Hertfordshire CM23 3UZ
Tel: (01279) 755777
Fax: (01279) 755149

15 Bell Street,
Hertfordshire CM21 9AR
Tel (01279) 600300
Fax: (01279) 600071