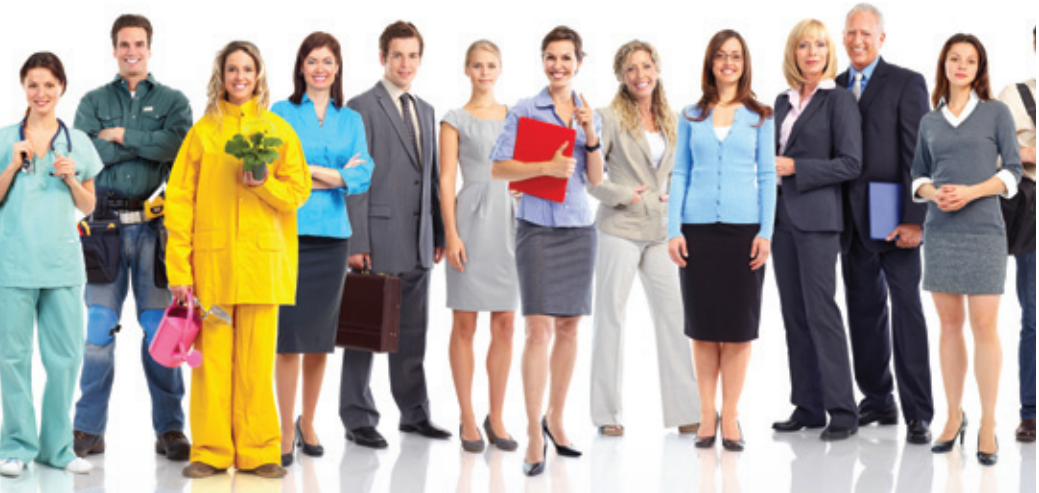
BBi Group News

NEWS FROM THE **HR TEAM**



EMPLOYMENT TRIBUNAL REFORMS

According to BIS, the following changes to the Amendments to Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 shall apply from April 2012;

- When a judge considers that a claim has a limited chance of success at tribunal, the maximum limit at which deposit orders can be made shall be increased from £500 to £1,000.
- The maximum limit at which judges can award costs to either party will be increased from £10,000 to £20,000.
- Employment judges will sit alone when hearing unfair dismissal claims unless they direct otherwise.
- The rules on witness statements will be changed so that they shall be 'taken as read', meaning that a witness statement will not be read out in its entirety, unless the judge directs otherwise.
- To administratively remove automatic witness expenses.

BBi GROUP - SUPPORTING YOUR BUSINESS

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INCREASES TO TRIBUNAL AWARDS

From 1 February 2012, the following increases to tribunal awards apply;

- The limit on guarantee payments increased to £23.50 from £22.20.
- The limit on the amount of a week's pay for the purposes of calculating the basic award for unfair dismissal and statutory redundancy pay has been increased from £400 to £430
- The maximum basic award for unfair dismissal increased from £12,000 to £12,900
- The maximum compensatory award for unfair dismissal increased from £68,400 to £72,300.

INCOME TAX RATES AND ALLOWANCES FOR 2012-13

The basic personal allowance will be £8,105 for those aged under 65; £10,500 for those aged between 65 and 74 and £10,660 for those aged 75 and over.

For taxable income of up to £34,370, the basic rate of income tax remains at 20% for 2012-13. For taxable income between £34,371 and £150,000, the higher rate remains at 40% and taxable income in excess of £150,000 continues to be taxed at 50%.

PARENTAL LEAVE EXTENSION POSTPONED

The proposed increase to parental leave from the current 13 weeks to 18 weeks which was to be implemented in March 2012 has been postponed until March 2013. BIS has stated that the reason for the delay is due to its ongoing 'modern workplaces' policy development.

NO CHANGE IN SMALL EMPLOYERS' COMPENSATION RATE

According to HMRC, there is no change in the small employers' compensation rate from 6 April 2012, which remains at 3%. This means that employers who meet the definition of "small" for these purposes (total employers and employees NIC for the previous year of £45,000 or less) can recover 103% of any SMP, OSPP, ASPP or SAP paid.

The recovery rate for employers who do not qualify for full reimbursement remains at 92%.

UNFAIR DISMISSAL CLAIMS – QUALIFYING PERIOD

As mentioned in our previous newsletter, from April 2012, the qualifying period of service required for unfair dismissal claims will rise from one year to two years. The increased period will apply in respect of employees dismissed on or after 6 April 2012. Those who are already in employment before 6 April 2012 will retain the current one-year qualifying period.

BIS has estimated that the above change will lead to a reduction of around 2000 claims per year bringing in a net benefit of £4.7m each year.

Discrimination claims do not require any minimum qualifying period.

Over the last couple of years the number of cases reaching Tribunal has hugely increased, it is thought to be by more than 50%. Many of you may have experienced this for yourselves, the increases being driven by disputes about equal pay, unfair dismissal, age, sex, race and disability discrimination.

With this being high on the agenda, we are able to offer our clients with not only hands on consultancy but also, an insured/legal expenses cover of up to £75,000 per claim.

For further information please contact Michelle Brinklow at BBi Alternative Solutions:

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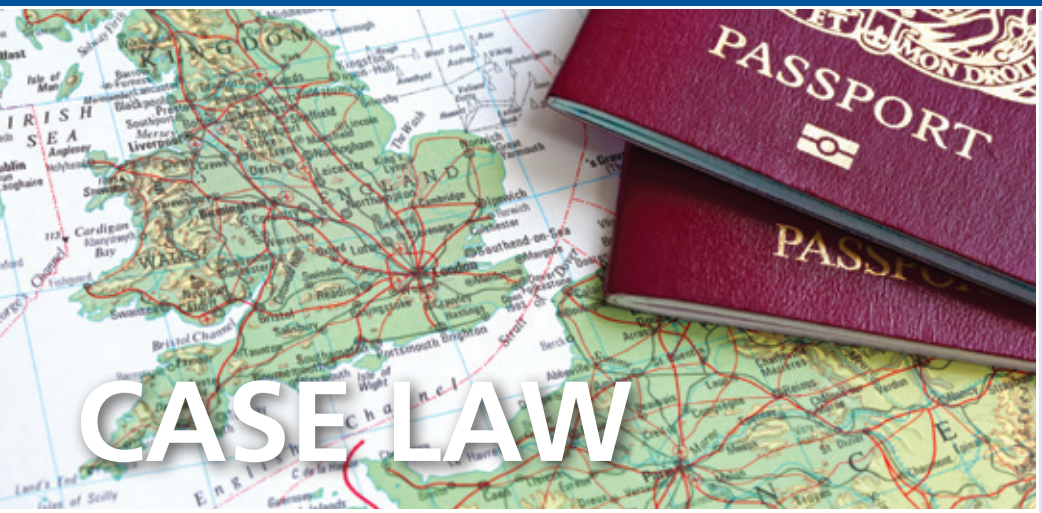
Email: mbrinklow@alternative-solutions.org.uk

BBi Berns Brett
Insurance Brokers : Risk Managers : Independent Financial Advisers



CASE LAW

ANNUAL LEAVE AND WORKING TIME REGULATIONS

Russell and others v Transocean International Resources Limited and others (2011)

This case relates to the annual leave provisions of offshore workers in the oil and gas industry. Staff work two weeks offshore and then two weeks onshore which was called a 'field break'. Staff were required to take their annual leave during their field breaks. However, the Claimants argued that the annual leave should be taken out of offshore working time and not from onshore time.

The Supreme Court held the decision in favour of the employer. It stated that a rest period (rest periods include daily rest, weekly rest and annual leave) means any period that isn't working time. It doesn't matter where the employee is and what he's doing during his rest periods, as long as he's not working. So field breaks fell into this category and, as a result, the employer could require workers to take their annual leave during their time onshore.

HOLIDAY ENTITLEMENT

KHS AG v Schulte (2011)

The European Court of Justice has confirmed that holiday entitlement in case of long-term sickness absence does not need to be accumulated for an unlimited amount of time. In this case, the Claimant's contract of employment allowed him to carry over his annual leave entitlement during long-term sickness absence for a period of 15 months from the end of the relevant leave year. Statutory holiday is provided to enable a worker to have a rest from work and to enjoy a period of relaxation and leisure. The ECJ gave guidance on the length of the carry over period, saying that it should:

- Be substantially longer than the reference period in respect of which it is granted (the reference period is normally a year);
- Ensure that the worker can have rest periods that may be staggered, planned in advance and available in the longer term; and
- Protect the employer from the risk of a worker accumulating periods of absence of too great a length and from difficulties long periods of absence will cause.

Please note however that although the ECJ in this case upheld a 15 month carry over period, the International Labour Organisation Convention on Annual Holidays with Pay allows 18 months and this may prove a safer course for the Government to take. While the Working Time Regulations do not permit for any carry over of statutory annual leave, it is also to be seen what carry over period will be allowed by the UK Government.

SALARY SACRIFICE SCHEMES

Reed Employment plc v Commissioners for HM Revenue and Customs (2012)

This case reveals potential ramifications for employers who offer salary sacrifice arrangements to their staff and highlights the importance of clear contractual terms. Companies offering salary sacrifice schemes must also clearly communicate the terms of such arrangements to their staff. The tribunal found that the daily payments made to cover lunch and commuting to temporary staff did not constitute a salary sacrifice arrangement as no part of the salary was sacrificed as a result of this arrangement. Further due to the nature of the temporary contracts, the commuting should have been deemed to be to their normal workplace, hence expenses would be non-deductible.

OVERTIME

Arriva London South Ltd v Nicolaou 2011

The Claimant used to work overtime during his days off. Subsequently he was asked to sign the 48-hour opt out agreement which he refused. The employer had introduced a policy which stated that any employee who had not signed an opt out agreement would not be offered overtime.

The Claimant brought a claim that he had been subjected to detriment for refusing to opt out of the 48 hour week under the Working Time Regulations 1998.

The EAT held that the employer had acted reasonably when refusing the employee overtime work on his rest days. It found that the employer did so to ensure compliance with their statutory duty under Regulation 4(2) of the WTR (which requires employers to take all reasonable steps to ensure that the 48 hour limit is complied with), and not to victimise the employee for refusing to sign the opt-out

This case highlights to employers that where employees have not signed an opt-out and where the aim in doing so is to ensure compliance with Regulation 4(2) of the WTR, employers can restrict the working hours to 48 hours a week.

CASE LAW - REDUNDANCY – SELECTION POOL

Capita Hartshead Ltd v Byard 2012

This case highlights the importance of careful selection of pool for redundancy. Employers must "genuinely apply" their mind to ascertain who should be in the pool to avoid unfair selection.

The Claimant was employed by Capita Hartshead Ltd as one of four actuaries. As she no longer had enough work for a full-time role, and in spite of three other actuaries, she was put into a redundancy selection pool of one. Following an individual consultation process, she was made redundant. She subsequently claimed unfair dismissal, arguing that all four actuaries should have been included in the pool.

The employer argued that its choice of pool was reasonable because there was not enough work to sustain four actuaries and, given the personal nature of the work done by an actuary for a pension scheme, there was a risk of losing clients if they were transferred between actuaries.

The majority of the tribunal found the employer's selection to be unfair given that the risk of losing clients was small. There was no evidence to suggest that having a wider pool would have been useless and that the Claimant would almost certainly have been selected for redundancy in any event.

NEWS FROM THE **HEALTH & SAFETY TEAM**

CHANGES IN RIDDOR REPORTABLE ACCIDENT REQUIREMENTS

The new rules on reporting workplace injuries came into effect on 6 April 2012, with the Health and Safety Executive (HSE) claiming that the changes will cut paperwork by a third and save British firms "thousands of hours completing official paperwork".

From 6 April, employers will no longer have to report injuries which keep workers off normal duties for seven or fewer days. Under the previous rules, when an employee was absent from work for more than three days following an incident, employers were required to report the injury to the relevant enforcing authority - either the HSE or the local authority. The amendment increases this "over three day" period to over seven consecutive days.

The HSE says the change to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) will see a fall of around 30% in the number of incidents that must be reported by law - an average of around 30,000 fewer reports a year.

Employers will also be given a longer period in which to report, increasing from 10 to 15 days from the time of the incident.

By increasing the reporting threshold from three to seven days, the change will also align with the "fit note" system which ensures that someone who is off work because they suffered a reportable injury has a professional medical assessment.

However, in a statement, the HSE emphasised that employers and others with responsibilities under RIDDOR must still keep a record of all over-three-day injuries, eg through an accident book.

Commenting on the changes, Judith Hackitt, the Chair of the HSE, said, "This is just one of many changes we are making to the health and safety system to make it simpler, clearer and more easily understood - stripping unnecessary paperwork out of the system without compromising essential protections for workers."

BBi Group News

WHAT ON EARTH IS **POUND COST AVERAGING?**

How do you know the right time to invest?

Everyone knows the simple answer is buy low, and sell high. But with markets around the world moving up and down at the drop of a hat how can you tell your lows from your highs? How can you time your investment so you can see the greatest reward?

Well, you can't.

In hindsight it's easy to see when you should have invested but of course, in hindsight, it's just as easy to see what lottery numbers you could have picked.

We don't believe anyone can time the market perfectly. Even Warren Buffet, who built a 50 billion dollar fortune investing doesn't attempt to time the markets.

Pound cost averaging is really just a fancy name for regular savings. By committing to fixed, regular investments you can avoid the impossible problem of getting the timing right.

The market will always move up and down, so in the 'up' months your investment will buy less of your chosen investment (but what you have will be worth more). Conversely in the 'down' months you will buy more.

The 'exciting' stock market performance of recent years highlights this perfectly. Over the last couple of years some of our clients panicked at the falling stock market and sold their investments. Others have continued to invest each month and have benefitted from the low prices by getting more for their money. When the markets rise in value, as they did in the early part of 2012, who do you think saw the greatest return? The regular savers!

Of course they didn't know when the market would fall or rise, but that is the point - by investing each month they don't have to worry about it.

So let's summarise some of the benefits of pound-cost averaging:

- **It helps your budget**
  Regular savings allow you to manage your money and commit to long-term investment without feeling the pressure on your finances.

- **It provides discipline**
  We all have good and bad habits. A bad habit is seeing what you have left over each month to save. A good habit is making this part of your regular finances, and once you get started it is easier to keep going.

- **It takes emotion out of investing**
  We understand it is easy to be led by your heart when dealing with issues of money, but emotional investment decisions are often wrong as they can be based on hope or fear rather than facts and analysis. A regular investment plan takes the emotional burden out of the picture.

Investment is a long-term process so you will never see results overnight, but by investing regularly you will benefit from low prices when the market is down. Until our crystal balls arrive in the post this is an approach we will continue to recommend.

ARE YOU A COMPANY DIRECTOR? DO YOU HAVE LIFE ASSURANCE?

Did you know that arranging life cover for yourself can be treated as a legitimate business arrangement and, with your company paying the premiums, there is also the potential of reducing your company's Corporation Tax liability?

A policy can be taken out and paid for by your business and put in trust for your dependents or desired beneficiaries. The result being:

- A lump sum paid to your chosen beneficiaries in the same way a personal policy would work

But with;

- No National Insurance liability
- No benefit-in-kind liability
- The likelihood of these payments being classed as allowable deductions for your business, which may help to reduce and potential Corporation Tax liability and
- The payment not counting towards an individual's lifetime or annual allowances

Please remember tax law may change in the future and will depend on your individual circumstances.

If you would like to know more information or would like to take advantage of this opportunity please contact Sarah Herd.

NEWS FROM **THE COMMERCIAL TEAM**

Recent data published by Charterfields reveals that 80% of clients across all sectors are under-insured by an average of 30%. It is vital, therefore, that declared values are accurate.

Under-insurance is a major concern, with the application of 'average' often leading to a reduced settlement in the event of a claim. If an insurance policy is 'subject to average' then, if the sum insured at the time of a loss is less than actual reinstatement cost, the amount paid under the terms of the policy will be reduced in proportion to the degree of under-insurance. Over-insurance is unnecessary and simply results in excessive premiums being paid for no benefit in return.

A fundamental part of the valuation process is establishing that existing declared values are accurate.

Valuation Health Check

Charterfields' free, no obligation, Valuation Health Check [VHC] service covers UK material risks and key elements of business interruption to provide clients with an initial investigation to determine whether existing declared values are on or off track. A VHC report is a useful mechanism by which an insured party can begin to better understand the issues that influence cover levels.

Should Charterfields' initial investigations reveal a need for a valuation to be undertaken to determine the true values at risk then a fixed cost fee, at preferential rates for Berns Brett clients, can be provided for a comprehensive survey and valuation to be undertaken.

A comprehensive survey and valuation would cover rebuilding or replacement costs of assets, consideration of debris removal and professional fees, advice on the treatment of value-added tax and, where required, information on the recommended indemnity period for business interruption. We provide specialist advice on the treatment of heritage property, indemnity assessments based on market value, modern material approaches and first loss analysis.

Charterfields cover all industrial, commercial and residential sector properties, for both building and plant valuations. A recent growth area has been in the education sector, particularly advising schools converting to academies on insurance matters, and, through Charterfields' real estate department, providing valuation advice for accounting purposes.

For further information, please contact your account handler or call Charterfields on 0870 0434170 and choose option 1.

AND THE WINNER IS.....

Congratulations to Martin H Dean from CHP who won the raffle when we exhibited at the Leaders Forum in Victoria in February.

BBi Berns Brett

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