BBi Group News

BBi Group : Supporting your Business

Group News - May 2015

NEWS FROM THE HR TEAM

Changes to the Deduction of Wages (Limitation) Regulations 2014

In our previous newsletter we highlighted the potential cost implications for employers around holiday pay (June 2014; case law Locke v British Gas Trading Limited 2013). There are two key changes to the Regulations that have come into force on 8 January 2015. The amendments made should limit the impact of costs to employers with the inclusion of overtime and commission to holiday pay.

The first change is the introduction of a two year time limit on all claims pertaining to deduction of wages. Under the Regulations, an employment tribunal can only consider claims on deduction of wages with two years before the claim was made by an employee.

This change will be effective only from 1 July 2015 so it means employees can still potentially bring claims before this date and go back several years. The second change is to the Working Time Regulations which clarifies the right to payment with regards to holiday pay. The provision confirms that the right to payment is not a contractual right; the right is statutory. This regulation came into force on 8 January 2015.

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Pensions 2015

A new private pension scheme has been introduced under the Pensions Scheme bill. Currently there are two types of schemes; the defined benefit and the defined contribution schemes. 'Shared Risk' Pensions (also called as Defined Ambition) are to be introduced to balance the risk of the scheme between employers, employees and third parties. The new scheme includes provisions "designed to encourage arrangements that offer people different levels of certainty in retirement or that involve different ways of sharing or pooling risk". The Bill, which also includes measures that will enable workplace and personal pension schemes to provide collective benefits, is currently in Parliament awaiting Royal Ascent.

Details of the consultations and other notes pertaining to the bill can be found at, https://www.gov.uk/government/collections/pension-schemes-bill-2014-to-2015

Revised Disciplinary and Grievance Procedures

As a result of the 2013 EAT ruling in Toal and another v GB Oils Ltd 2013, ACAS had consulted on proposed amendments to the Code and published a revised code which came into force on 11 March 2015. The specific changes relate to the right of an employee to be accompanied at disciplinary and grievance hearings. The revised changes now allow an employee the right to choose any companion so long as the companion is either a work colleague, a trade union representative or an official employed by a Trade Union.

A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker. Employers must agree to a worker's request to be accompanied by any companion from one of these categories. Workers may also alter their choice of companion if they wish. As a matter of good practice, in making their choice workers should bear in mind the practicalities of the arrangements. For instance, a worker may choose to be accompanied by a companion who is suitable, willing and available on site rather than someone from a geographically remote location.

New statutory rates

With effect from 6 April 2015, statutory rates for maternity, paternity, adoption and shared parental leave will increase to £139.58 per week.

Statutory sick pay (SSP) rate will increase to £88.45 per week.

Further new compensation limits for employment tribunal awards and for calculating redundancy pay, also effective from 6 April 2015, will increase from £464 to £475 for a week's pay. The maximum compensation amount for unfair dismissal will be set to £78,335.

CASE LAW

GMB v Henderson 2013

This case involves an employee of General Municipal Boilermakers (GMB) who claimed he was dismissed (for gross misconduct) due to his philosophical beliefs and hence claimed unfair dismissal. Under Equality Act 2010, employees are protected against discrimination for holding philosophical beliefs.

Mr. Henderson's job involved undertaking political work on behalf of the Labour party. He was dismissed after he organised picket lines at the House of Commons in November 2011 to protest against the government's plans to cut public pensions. He claimed unfair dismissal due to his philosophical belief in 'left-wing democratic socialism'. While the tribunal held he was fairly dismissed and it was due to his conduct (and that he was unmanageable), it also concluded that left wing democratic socialism is a philosophical belief under the Equality Act. Both Mr. Henderson, the claimant and GMB have appealed against the decision – GMB on the finding that the claimant was discriminated against, and Mr. Henderson that he was fairly dismissed because of his conduct.

While waiting to hear the final verdict, this case will have significance, in that it probes deeper into what kind of behaviour constitutes appropriate political or religious belief in the workplace.

Mather v Chief Constable of Greater Manchester Police 2015

This case highlights the importance to employers to be aware of any discrimination issues when dealing with flexible working requests. PC Mather was a single mum working for Greater Manchester Police since 1991. Between 2008 and 2011 she reduced her hours to term time working only. However when she made another term time working application in 2012, her request was rejected on the grounds that she was required to cover the anti-social behaviour after school and to work an additional nine "critical" days outside of term time. The Police Force stated that they had rejected her request as her absence would not fulfil the following objectives; training, updates before the start of the new school year, deskilling and operational resilience.

The Employment Tribunal held that the Police Force had indeed indirectly discriminated against the Claimant. The ET while accepting that operational resilience was a legitimate aim, rejected the other three objectives given by the Force as their reason for rejecting the flexible working request. The Tribunal also found that the Force was unable to justify how the nine "critical" days that the employee was required to work was identified. Finally the Tribunal also held that the disadvantage to the employee outweighed the advantage to Greater Manchester Police and was a disproportionate way for achieving the Police Force's aim.

Employers must ensure they are clear about their reasons for refusing flexible working requests and be aware of situations where they may be putting the employee at a particular disadvantage.

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 Risk Solutions:

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