BBi Group News

NEWS FROM THE **HR TEAM**

BBi GROUP - SUPPORTING YOUR BUSINESS

EMPLOYMENT TRIBUNAL FEES FROM 2013

Following a consultation with regards to the cost associated with bringing a claim at an employment tribunal, the Government published its response in July 2012.

According to the Ministry of Justice, people using employment tribunals will start to contribute a significant proportion of the £84m cost of running the system through the fees. It will also encourage early resolution of disputes through alternatives such as mediation, ultimately reducing taxpayer subsidy of the tribunals.

From summer 2013, based on the type of claim there will be a two-level fee structure for anyone bringing in a single tribunal claim. Level 1 shall be for standard claims such as unlawful deduction of wages, redundancy pay, notice pay, etc and will cost £160 on issue of a claim and a further £230 as hearing fees. Level 2 shall be for most of the other claims including unfair dismissal and discrimination. It will attract a cost of £250 on issue of a claim and a further £950 at the hearing stage. Further, for multiple level 1 claims, the cost could range from £780 to £2340. For multiple level 2 claims, including those relating to unfair dismissal, discrimination, equal pay and whistleblowing claims, depending on the number of claimants, the cost could range from £2400 to £7200.

There will also be a fee structure for multiple claims and at the Employment Appeal Tribunal there will be an appeal fee of £400 and a hearing fee of £1,600.

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CHANGES TO **EQUALITY ACT 2010**

1. Under the Government's Red Tape Challenge process, the Home Office had been consulting on the government's proposal to repeal third party harassment which currently makes employers liable for harassment of an employee by a third party. A summary of the results is expected to be published in November 2012.

2. There has also been a consultation on repealing two enforcement provisions from the Equality Act 2010;

- employment tribunals' power to make wider recommendations in discrimination cases
- the procedure for obtaining information

The above two provisions are said to not have any direct benefit and do not add to the tribunals' existing power. By repealing them, the government is hoping to reduce the burden on the employers. A summary of the results is expected to be published in November 2012.

3. From October 2012 it will be unlawful to discriminate against employees on the basis of their age unless such a practice is covered by an exception or objectively justified. The Equality Act 2010 already contains exceptions such as positive action, occupational requirement and age-based state benefits and will now apply to the ban on age discrimination in services.

It is lawful to treat people differently because of their age in the following circumstances;

a. Where another piece of legislation allows or requires people to be treated differently because of their age.

b. Where a private club or association caters for a particular age group. For example, it will remain lawful to have clubs for young people and pensioners;

c. Where a charity provides benefits only to people of a particular age or age group. For example, a charity for the elderly can continue to provide benefits in cash or kind only to older people;

d. Where necessary for reasons of national security. In addition, according to the Home Office guidance document, specific exceptions will now apply to the financial services providers, any age-based concessions, age-related holidays, age verification carried out by shops when selling restricted goods, immigration, residential park homes and sports.

The above implies that where differentiating based on age is not covered by an exception or positive action, service providers will be required to show objective justification for the differentiation.

Guidance on various changes to the Equality Act 2010 published by the Government Equalities Office can be accessed through the link below;
http://www.homeoffice.gov.uk/publications/equalities/equality-act-publications/equality-act-guidance

NATIONAL MINIMUM WAGE RATES FOR 2012

With effect from October 2012, the following National Minimum Wage rates would apply;

For workers aged 21 and over - £6.19
For workers aged 18-20 - £4.98
For workers aged 16-17 - £3.68
Apprentice Rate (under 19 or 19 or over and in the first year of their apprenticeship) - £2.65

The accommodation offset rate, which is the rate the employer can count towards the NMW pay if they provide accommodation, will be £4.82.

CONSULTATION ON **COLLECTIVE REDUNDANCIES**

The Government is currently consulting on changing the rules on collective redundancies. It is proposing to reduce the minimum 90 day consultation period to a 30-45 day minimum consultation in case of collective redundancies for 100 or more employees.

It is also looking at issuing a new, non-statutory, Code of Practice which will address a number of key issues affecting redundancy consultations.

The consultation is expected to close in September 2012.

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INCREASE IN THE NUMBER OF **PRE-CLAIM CONCILIATIONS**

According to ACAS, the demand for its pre-claim conciliation service has risen by one-third (34%) in 2011/12. This has meant that Acas has dealt with 23,777 cases, 6,000 more than in the previous year of which nearly 1,000 were collective disputes.

The annual report published by ACAS highlights that the Government has asked Acas to introduce a new early conciliation service from 2014.

All potential tribunal claims will be referred to Acas first to see if it can resolve the dispute before it is lodged at the employment tribunal.

CHANGES TO THE **VETTING & BARRING SCHEME**

From September 2012, the following changes to the vetting and barring scheme will be introduced;

- New definition of regulated activity
- Repeal of controlled activity
- Repeal of registration and continuous monitoring
- Repeal of additional information
- Minimum age (16) at which someone can apply for a CRB check
- More rigorous 'relevancy' test for when the police release information held locally on an enhanced CRB check

The objective of the above changes is to scale back the scheme to more common-sense levels. For more information, please go to the following link; http://www.homeoffice.gov.uk/publications/crime/disclosure-and-barring/leaflet-england-wales?view=Binary

UNFAIR DISMISSAL CLAIMS

From 6 April 2012, the qualifying period of continuous employment in order to claim unfair dismissal and to be able to request a written statement of reasons for dismissal has increased from one year to two years. This will apply only to those employees whose continuous employment started on or after 6 April 2012.

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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BBi Risk Solutions
Health & Safety : Human Resources : Training : Risk Management

CASE LAW

MEISTER V SPEECH DESIGN CARRIER SYSTEMS GMBH, APRIL 2012

In the above case, the European Court of Justice, held that an employer is not obliged to provide an unsuccessful job applicant with information on the successful candidate, although a failure to do so could lead to an inference of discrimination in a subsequent tribunal claim.

The claimant, of Russian origin, applied to a job with the German company. She held Russian qualifications which were also recognised in Germany. However, her application was rejected and she was not given reasons for the rejection. The Claimant subsequently filed a discrimination claim in the German courts on grounds of sex, ethnic origin and age and also sought disclosure of the successful candidate's qualifications and application details.

The case was referred to the European Court of Justice, which held that EU law must be interpreted as follows:

- The principle of equal opportunities and equal treatment of men and women in matters of employment and occupation must be interpreted as not entitling a worker to have access to information indicating whether the employer engaged another applicant at the end of the recruitment process.
- Nevertheless, it cannot be ruled out that a defendant's refusal to grant any access to information may be one of the factors to take into account in the context of establishing facts from which it may be presumed that there has been direct or indirect discrimination. It is for the referring court to determine whether that is the case in the main proceedings, taking into account all the circumstances of the case before it.

The above ruling implies that while employers are not required by law to disclose successful applicants' details, the employer must also be able to justify the refusal to disclose such information. It also highlights the importance of not only having an equal opportunities and diversity policy, but also clear guidelines on recruitment and selection.

CASE LAW

DUCKWORTH V BRITISH AIRWAYS PLC 2012

The claimant was employed by British Airways as an Air Steward in its long haul fleet. He suffered from diabetes and coeliac disease.

During a long haul flight, the claimant ate the only available option of mushroom risotto and fell sick. Following his return to the UK, the claimant was seen by a doctor appointed by BA who decided that the claimant was unfit to fly. This was argued by the claimant's diabetic consultant who believed that the claimant could resume flying duties. Subsequently another doctor appointed by BA cleared the claimant to work in the short haul fleet.

It took BA another couple of months before putting the claimant on short haul flights. The whole process took 6 months for BA and the tribunal held that it was an unreasonable delay on BA's part which amounted to failure to make reasonable adjustments and discrimination.

The claimant won his claim and was awarded £6,000 compensation 'in respect of injury to feelings' and £2,505.60 for loss of earnings he would have received in long-haul cabin crew on top of his basic wage.

COMMERCIAL NEWS

August 2012 : Following surveys by leading professionals in the market it has been highlighted that under insurance is a major concern. The following key highlights were made:

- 20% average level of under insurance across all sectors covering cases in the past twelve months
- 34% average level of under insurance for property (predominantly UK risks)
- 67% represents those clients that were under insured by over 10%
- 25% of cases reviewed were under insured by between 11% and 30%
- 18% of cases reviewed were under insured by between 51% and 100%
- 521% error factor was the worst case under insurance example for buildings

WHAT ARE THE KEY CAUSES OF UNDER INSURANCE?

The following common factors seem to influence errors in declared values:-

- **The miss-use of market value or other bases of valuation**

The most common factor identified.

- **No history of valuations having been carried out**

Absence of valuations or periods in between reviews exceeding three years.

- **Mis-use of inflation indices**

Inflation factors affecting construction costs are sector specific. General inflation is an incorrect basis but is commonly used. For example it is incorrect for a manufacturer sourcing assets from overseas to the apply UK inflation rates. Local inflation rates and exchange rate movements should be taken into account.

- **Listed buildings**

The building costs applying to listed buildings cannot be compared with standard building construction costs.

- **Reliance on fixed asset register data**

Asset registers are suitable only for financial analysis and depreciation, and should not be used as a basis for estimating declared values for insurance.

- **Capitalisation thresholds**

For insurance, all assets are required to be included, regardless of any financial accounting threshold.

- **Written-down values**

Confusion concerning the relationship between written-down values for accounting and declared values is a key factor. In practice, there is no relationship between the two.

- **Second-hand acquisitions**

The ability to source quality assets in the open market is now commonplace with the price paid being the amount capitalised in accounts. Accordingly, where accounts are used for declared values, the value under these circumstances is immediately below true replacement cost.

- **Rental / leased assets**

In the majority of industrial / commercial concerns, third party assets may exist for which insurable liability attaches. These classes of asset are often missed.

- **Discounted costs**

For insurance, it is not appropriate to assume that discounts in normal trading will be available as, in a loss situation, the power of negotiation often moves from the buyer to the manufacturer.

BBi have teamed up with Charterfields International Asset Consultants to offer our clients a unique insurance valuation service. Charterfields can provide our clients with a free Valuation Health Check report and will consider the values at risk and compare these with your current sums insured. They will then, if appropriate, provide you with a list of key recommendations and if a full valuation is suggested, they will explain why and provide a fixed fee for this. Please contact if you wish to take advantage of this offer.

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