CHILTERN HR

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1. Employer was not required to consider reasonable adjustments

The Employment Appeal Tribunal has ruled that there was no need for an employer, who had neither actual nor constructive knowledge of its employee's disability, to consider reasonable adjustments.

What does this mean?

By the time of the tribunal hearing it was accepted that the employee was disabled by reason of bipolar disorder. However, it was held that at the relevant time the employer did not know and could not reasonably have expected to have known that the employee was disabled. This was because the employer only had the employee's own assertion that he was displaying conduct typical of the symptoms of some persons who suffered from bipolar disorder and his own self analysis and there was 'no definitive diagnosis' by his doctors at the relevant time of the employee being bipolar.

What should employers do?

Employers should remember that the definition of disability for the purposes of equality law is wide and should take specific legal advice if it is not clear whether a person is disabled.

Reference: Cox v Essex County Fire and Rescue Service

2. Care worker was entitled to NMW for travel time and 'sleepovers'

The Employment Appeal Tribunal has held that a care worker was entitled to be paid the National Minimum Wage when travelling between clients and when she slept over at clients' homes.

What does this mean?

The employee in this case was entitled to be paid the National Minimum Wage for the time spent travelling between clients' homes because, whilst her contract of employment described each separate visit as a 'shift', she was contracted to work 50 shifts per week in accordance with a rota there was inevitably travelling time between each 'shift' and insufficient time for the employee to return home between 'shifts'. These facts meant that, the employee was carrying out 'assignment work' and the travelling time which she spent should have been remunerated.

She was also entitled to be paid the National Minimum Wage for 'sleepovers' at clients' homes because under her contract of employment, she was required to be present at a client's home from 11 pm to 7 am and, therefore, this time was 'time work' for the purposes of National Minimum Wage legislation. The fact that she didn't actually perform any tasks during a 'sleepover' was irrelevant.

What should employers do?

Employers who are unsure whether a person is entitled to the National Minimum Wage should take legal advice.

Reference: Whittlestone v BJP Home Support Limited

3. Employers of unpaid interns are targeted

HMRC has announced that it is targeting unpaid intern employers amid concerns that unpaid interns are being used as cheap labour. It is writing to 200 employers who have recently advertised internships to ensure that they are paying the minimum wage. It has also announced that it will 'shortly' be carrying out 'targeted checks' and will take 'tough action' against employers who break the law. HMRC has already issued penalties to 466 employers this year and has been targeting the fashion industry who often takes on a high number of interns.

What should employers do?

Employers should pay interns at least the National Minimum Wage if they are entitled to it. An employer cannot get round the National Minimum Wage legislation simply by labelling a worker as 'unpaid' or an 'intern'.

4. Reforms to apprenticeships have been announced

The Government has published an implementation plan for its proposals to reform apprenticeships in England which is to start for the academic year 2015/16.

What does this mean?

Existing apprenticeship frameworks, governed by the Apprenticeships, Skills, Children and Learning Act 2009, will be replaced by new standards. These new standards will be designed by employers to meet their needs, the needs of their sector and the economy more widely. The standards will be short and will set a level of skill, knowledge and competency, against which an apprentice will be assessed. In order to ensure that the new standards are rigorous the Government will set a 'small number of criteria' that the standards will need to meet.

Apprentices will need to demonstrate their competence through rigorous independent assessment, focused primarily on testing their competence at the end of their apprenticeship. They will be able to achieve a pass, merit or distinction grade. Off-the-job training will continue to be a requirement for all apprenticeships and, English and maths requirements will be introduced. Without exception, all new apprenticeships will have to last for at least 12 months.

5. Injunction granted to enforce garden leave clause

The High Court has granted an injunction against a stockbroker to enforce a contractual garden leave clause for the duration of his 12 month notice period.

What does this mean?

Garden leave must be justified on similar grounds as a restrictive covenant because long periods of garden leave are capable of abuse. However, in this case the court was persuaded that an injunction was a reasonable way of protecting the employer's legitimate interest in retaining its clients, as it would take the firm's investment managers a long time to forge new client relationships. The court said that a 12 month injunction would not cause disproportionate harm to the employee since he was to be paid his full salary and benefits and there was no suggestion that he would lose the new job he had found with a competitor. In reaching its decision the court also took into account the fact that the employee had agreed to a mutual 12 month notice period, that he had sought legal advice on it, had not argued for a shorter notice period and when he agreed to the 12 month notice period his salary was tripled.

What should employers do?

Employers seeking to prevent ex-employees from taking business to a competitor should seek legal advice in order to impose specific restrictive covenants before the employee starts the work in question.

Reference: JM Finn & Co Limited v Holliday

6. ACAS guidance on small-scale redundancies

ACAS has published new guidance to help employers handle small-scale redundancies. The guidance is aimed at small and medium sized businesses who want to make fewer than 20 people redundant.

The guidance includes a legal checklist, useful tools and practical examples and answers to frequently asked questions. It explores the alternatives to redundancy and sets out a seven step plan, which it recommends that businesses follow where there is no alternative but to make staff redundant.

The seven step plan covers briefing managers to ensure that they are prepared, trained and informed, consulting with staff, selecting staff for redundancy, discussing redundancy notice and pay with staff, thinking about notice period rights, allowing staff to appeal against their selection for redundancy and how to make the best of remaining staff.

A full copy of the guidance can be found here
http://www.acas.org.uk/index.aspx?articleid=4547

What should employers do?

Employers should always take legal advice before making staff redundant.

7. Employer was entitled to make deductions

The Employment Appeal Tribunal has held that an employer was entitled to make deductions relating to the cost of recruiting an employee, bringing her to the UK from Poland and training her from money due to her when she was summarily dismissed for gross misconduct approximately three months after she started the job.

What does this mean?

The employer was entitled to make the deductions because when she entered into the contract of employment she had agreed that if she terminated her employment or was dismissed for misconduct within the first six months the employer was entitled to recoup such costs and the amounts the employer sought to recoup amounted to a genuine pre-estimate of the loss it was likely to suffer as a result of termination of the contract at the time the contract was entered into.

What should employers do?

Employers should put agreements in place in advance of the events for which they seek to make deductions and, if unsure whether the deduction is reasonable in the circumstances, should take specific legal advice before making it.

Reference: Cleeve Link Limited v Bryla

8. Revised health and safety guidance

The Health and Safety Executive has published revised guidance for employers on how to protect the health, safety and welfare of their workers.

The updated Workplace Regulations Approved Code of Practice and guidance is designed to make it easier for employers to understand and meet their legal obligations. It is intended to help employers understand the regulatory requirements on key issues such as temperature, cleanliness, workstations and seating, toilets and washing facilities.

The revised publication can be obtained through the Health and Safety Executive's website http://www.hse.gov.uk/pubns/books/l24.htm.