



CHILTERN HR NEWSLETTER JULY 2016

Dismissal of employee for breakdown in working relationships was unfair

The Employment Appeal Tribunal has held that the dismissal of an employee for some other substantial reason, namely a breakdown in working relationships, was unfair because the employee hadn't been given the opportunity to show that she could work with colleagues about whom she had made complaints.

The dismissal was unfair because:

- the procedure adopted was not fair and was not compliant with the ACAS Code.
- the employer's approach had been to start from the position that the relationship had broken down and to put the burden on the employee to prove otherwise
- the employer had taken into account matters of which the employee was unaware and the employee had not had an adequate opportunity to put her case or to challenge effectively the assertions that had been made against her.
- the decision that there had been an irretrievable breakdown in the relationship was outside the range of reasonable responses - the employer would and could only have given the employee the opportunity of putting her statements about her willingness and ability to return to harmonious work to the test.
- the employee was a middle ranking clerical employee working as part of a team in a job that would not necessarily bring her in day to day contact with those with whom she found a relationship difficult.

Employers should always take specific legal advice before making a dismissal or taking action short of dismissal.

Employee prosecuted for taking client data as he was about to start a new job with a rival

The Information Commissioner's Office has prosecuted an employee for unlawfully obtaining client data. As he was leaving the company to start a new role at a rival company he emailed the details of 957 of the company's clients to his personal email address. The documents contained personal information including the contact details of customers, the purchase history of customers as well as other commercially sensitive information. On pleading guilty he was fined £300, ordered to pay £405.98 in costs and ordered to pay a victim surcharge of £30.

The Information Commissioner's Office has the power to prosecute in such instances for the offence of unlawfully obtaining data under section 55 of the Data Protection Act 1998.

Employers should take specific legal advice before contacting the Information Commissioner's Office in similar circumstances.



Historic reasons for difference in treatment does not make it lawful

The Employment Appeal Tribunal has allowed an appeal after a part-time Judge's discrimination claim was dismissed.

The Employment Appeal Tribunal said that the tribunal had arguably missed the point when it said that the difference in treatment between the Judge and his full time comparator was due to the haphazard growth of tribunals and had nothing to do with part-time status.

Noting that it has long been the experience of cases of unlawful discrimination that the difference in treatment may be historic, the Employment Appeal Tribunal said, that does not of itself, however make it lawful.

Employers should ensure that any historic practices which may be discriminatory be reviewed and if necessary updated.

Migrant workers did not suffer race discrimination

The Supreme Court has dismissed the appeals of two vulnerable migrant workers who argued that they had suffered direct or indirect race discrimination.

Whilst there was no doubt that the individuals were treated disgracefully, neither suffered race discrimination because the reason for their abuse was not due to their nationality but was due to their vulnerable immigration status. Parliament, it said, could have chosen to include immigration status in the list of protected characteristics but it did not do so.

Employers should bear in mind that we now have specific legislation designed to combat slavery and human trafficking requiring large businesses to publicly state each year the action they have taken to ensure that their business and supply chains are slavery free.

UK Gangmaster liable for modern slavery

The High Court has ruled that a UK company is liable to pay compensation to victims of modern slavery in the first case of its type.

The High Court ruled that the workers were entitled to compensation for:

- failure to pay the agricultural minimum wage
- charging prohibited work finding fees
- unlawfully withholding wages
- depriving the workers of facilities to wash, rest, eat and drink.

The amount of compensation will be assessed at a later hearing.



Disclosure of acquittal in enhanced criminal records check did not breach human rights

The Court of Appeal has ruled that the disclosure of a rape acquittal in an enhanced criminal records certificate did not amount to a breach of a job seeker's human rights.

The disclosure did not breach the presumption of innocence (under article 6(2) of the European Convention on Human Rights) as it did not suggest that the jury had been wrong to acquit or that the police thought that he was in fact guilty. The disclosure did not breach the right to privacy (under article 8) as it was proportionate because any detriment to the individual had to be balanced against the need to protect vulnerable people.

Employees had not transferred under TUPE

The Employment Appeal Tribunal has held that in considering whether there had been a service provision change under TUPE a tribunal had wrongly relied on the facts relevant to what activities the employees were carrying out rather than on what activities they were carrying out for the relevant client.

For there to be a TUPE transfer at the relevant time there needed to be an organised grouping of employees whose principal purpose was carrying out the relevant activities for a particular client. It is not sufficient that a department carries out certain work.

Employers should always take specific legal advice on issues relating to TUPE.

Statutory Sick Pay Entitlement

Statutory Sick Pay the absolute minimum a company is legally bound to pay an employee if they are too ill to work. Currently, the standard rate is £87.55 per week. Many companies have their own sick pay programme – known as company sick pay – which will offer more than the statutory minimum.

Who is entitled to sick pay?

- Any of your employees who have a contract, including temps and new employees
- They must have been sick for at least four days in a row – not necessarily working days
- They must earn at least £102 per week (as of April 2011)
- They must formally tell you that they are sick
- Statutory sick pay can last for up to 28 weeks



110 Butterfield, Great Marlings
Luton • Bedfordshire • LU2 8DL

What are the employer's rights?

You are entitled to ask for evidence of illness after eight days of sick leave. If you offer company sick pay, the terms and requirements must be stipulated in contracts. With the employee's permission, you can obtain a medical report after four weeks. In some circumstances employers can also end long term sick pay using the SSP1 form, so the individual can apply for Employment and Support Allowance from the government instead.

Absence management and reduction

Statutory sick pay entitlement is vital to staff suffering from genuine illness or injury, helping to keep their head above water in times of great need. Unfortunately, there will also be individuals who try to cheat the system. So, your challenge is to tell the difference – a task made much easier by absence management procedures.

One of the first steps to effective absence management is to invest in a HR system as provided by Chiltern Solicitors, to record the dates of each absence and the reasons given. Employers can therefore easily spot any cause for concern, and act on it by talking to the employee, and initiating your company policy regarding absences.

It's important to bear in mind that one of the most common causes of long term absence, and therefore a big drain on company resources, is work related stress.

Sick pay entitlement and holidays

There has been a lot of discussion recently surrounding employee holiday pay entitlement and sick leave. In June 2012, an EU court ruling determined that if an employee falls ill just before or during their planned holiday leave, they can apply to convert it to statutory sick leave. The paid holiday leave can then be taken at a later date. However, employees will need to satisfy all the usual requirements to obtain statutory sick pay, including medical evidence of illness.

Statutory sick leave and holidays can be sorted by department, time period or individual, so the manager or team leader can see the relevant staffing levels in just a few clicks. Staff can also be authorised to input their own absences and holiday leave requests, and everything is updated in real time so managers elsewhere can keep track.



110 Butterfield, Great Marlings
Luton • Bedfordshire • LU2 8DL

CONTRACTS OF EMPLOYMENT

The contract is the most important HR document you'll have in your business and it should be kept up to date with changes to salary and working hours, plus any changes to employment law.

The biggest problem we often find is that many businesses don't have contracts. We advise all employers to issue employees with a contract.

At the very least you are legally required to provide all members of staff with a written statement of the terms and conditions of their employment within 60 days of starting employment. By setting out what is expected from both the employee and the employer in writing, this can prevent misunderstandings in the future and make managing employees much easier.

Plus, having an up-to-date written set of terms will become essential should matters ever come to a head.

Note: Changes to employment law come into force in April and October every year, so you need to make sure your contracts are updated.



PHILIP IVINSON LLP

- Specialist in all Employment Matters
- For all your HR Help and Guidance

Telephone: 01582 439795

www.chilternsolicitors.co.uk

philip.ivinson@chilternsolicitors.co.uk

