Employment Law Update April 2024

DOWNS
SOLICITORS AND NOTARIES

Welcome to our newsletter providing a snapshot of recent employment and HR law developments.

The topics covered in this issue include:

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- New Vento bands published
- Fees for bringing employment tribunal claims back on the horizon
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New family-friendly employment regulations take effect

April is normally a busy month for employment law and this year is no exception with several new employment rule changes coming into effect then.

The Carer's Leave Regulations 2024 – from 6 April 2024 employees with a dependent who has a long-term care need can take up to a week's unpaid carer's leave in any 12-month period. Employees do not need to complete a qualifying service period in order to exercise this right. Employees must give their employer notice of their intention to take the leave being the longer of twice the period of notice as the period of leave requested or 3 days' notice. Employers can postpone the leave if it would cause undue disruption but must then allow the leave to be taken within one month of the date the requested leave would have started.

The Paternity Leave (Amendment) Regulations 2024 change the rules regarding paternity leave where the expected week of childbirth (EWC) or placement in adoption cases is after 6 April 2024. Previously, paternity leave had to be taken as either a block of one week or two weeks. Under the new rules two blocks of one week can be taken. The leave can be taken at any time in the 12 months following birth or placement, rather than within 8 weeks as had been the case before the changes. The notice employees must give to take the leave has also been shortened to 28 days. Previously they had to give 15 weeks' notice before the EWC.

Also from 6 April 2024, the changes introduced by the *Employment Relations (Flexible Working) Act 2023* take effect. From that date employees can make two flexible working requests per year. Previously it was one. Employers must deal with the request within

two months rather than the three months that had applied before the change. Requests cannot be refused until the employee has been consulted with and employees will no longer be required in their application to say how any disruption caused by the change they are requesting might be dealt with. In addition, under *The Flexible Working (Amendment) Regulations 2023*, from 6 April 2024, the right to request flexible working becomes a day one right. Previously, employees required 26 weeks' service before they had the statutory right to make a request. Also coming into effect on 6 April 2024 is ACAS' revised guidance on dealing with flexible working requests. A survey by ACAS last month found that 43% of employers were unaware of the changes to flexible working set out here.

The *Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024* extend the protection from redundancy that previously only applied to employees during maternity, adoption or shared parental leave whereby they were given priority over other candidates in respect of existing vacancies. From 6 April 2024, the protection is extended to also cover pregnant employees and those during and following return from maternity leave, adoption leave or a period of 6 or more weeks of shared parental leave for, broadly speaking, 18 months from the EWC, birth or placement.

In light of these changes, now might be a good time to review your organisation's policies in these areas if this has not already been done.

New holiday rules bite

As we reported in our January newsletter, new rules for holiday and holiday pay come into effect for leave years beginning on or after 1 April 2024. Briefly, amongst other things, these:

1. Introduce a new regime for irregular hours workers and part-year workers setting out how they accrue holiday and how statutory holiday pay is calculated and allowing rolled-up holiday pay for those workers;
2. Preserve EU rights that would otherwise have been lost following Brexit under which the calculation of 4 weeks' of statutory holiday pay must be based on normal remuneration (e.g. including commission and overtime) and allowing carry over of leave to subsequent leave years in cases where illness or statutory family-related leave has prevented the worker taking it.

Annual rates and limits increases

From 1 April 2024, the national minimum wage has increased. The national living wage (for those aged 21 or over) goes up to £11.44 from £10.42.

Statutory sick pay increases from 6 April 2024 from £109.40 to £116.75 per week. Statutory maternity pay increases from 7 April 2024 from £172.48 to £184.03 per week.

Compensation rates and limits have also increased from 6 April 2024. The limit on a week's pay used for calculating statutory redundancy pay is increased from £643 to £700. This increases the maximum payout for statutory redundancy pay (and the basic award for unfair dismissal) to £21,000, up from £19,290. The maximum compensatory award for unfair dismissal rises to £115,115, up from £105,707.

New Vento bands published

Each year the Vento bands, which set out the range of employment tribunal awards for injury to feelings in discrimination cases, are uprated. For claims presented on or after 6 April 2024 the new bands are as follows:

- Lower band (for the less serious cases) – between £1,200 - £11,700 (previously £1,100 - £11,200)
- Middle band (for more serious cases not falling in the top band) – between £11,700 - £35,200 (previously £11,200 - £33,700)
- Top band (for the most serious cases) – between £35,200 - £58,700 (previously £33,700 - £56,200) although more can be awarded in the most exceptional cases.

Related to this, employers may be aware that from the end of October 2024 the duty to take reasonable steps to prevent sexual harassment comes into effect with tribunals able in successful claims to increase the compensation awarded, including for injury to feelings, by up to 25%.

Fees for bringing employment tribunal claims back on the horizon

Earlier in the year the Ministry of Justice held an 8-week public consultation regarding the reintroduction of fees for bringing employment tribunal claims. Fees had previously applied from 2013 but in 2017 they were scrapped by the government after the Supreme Court held they were unlawful because they restricted access to justice and therefore deterred workers from bringing claims. Under the previous regime the fee for bringing an unfair dismissal claim, including the hearing fee, was £1,200. This time around the government are suggesting a modest fee of just £55 to make a claim. The government states that tribunal fees will reduce the burden on taxpayers but given that its own estimate of the revenue that fees will generate is only £1.3 – 1.7m per year that aim may be dubious given the likely costs associated with making the necessary changes to administer fees. The government's response to the consultation is awaited.

Changes aren't permanent but change is

How things have changed since Covid, but are we moving back to the world of work that existed pre-pandemic? Last month the retailer Boots announced it was ending hybrid working for its office staff with its UK managing director stating that this was 'better for its culture'. Other large employers have taken similar steps. Meanwhile, society may be moving towards the four-day working week. A recent report by the research organisation Autonomy highlighted the benefits of moving to compressed working hours. This followed a UK trial of four-day working in 2022 of 70 firms. The report states that 89% of the firms that took part in the trial have continued the arrangement with 51% making it permanent. All managers and CEOs said that the change had been positive or very positive to their organisations with improved staff wellbeing and work-life balance. Almost half of the organisations taking part reported a positive impact on productivity. Other benefits included staff being more focused with less procrastination, improved work satisfaction and reduced staff turnover. Autonomy and the 4 Day Week Campaign have now launched a new initiative '4ugust' encouraging employers to trial four-day working during August each year.

Failure to make reasonable adjustments where employer did not offer trial period

In *Rentokil Initial UK Ltd v Miller 2024* the claimant was a pest control technician which involved him working at height on ladders. He was diagnosed with multiple sclerosis in 2017 and by the end of 2018 it was deemed unsafe for him to continue in the role because of his disability. In February 2019 Mr Miller applied for one of two service administrator vacancies but performed poorly in maths and verbal usage tests and, it seems, had a poor interview. The recruiting manager did not offer him the role and in March 2019 Mr Miller was dismissed, no suitable alternative roles having been identified for him. He brought claims of unfair dismissal and disability discrimination and, in relation to the latter, he argued that Rentokil should have at least offered him a trial of the service administrator role. The employment tribunal upheld his claims and agreed that Rentokil had failed in its duty to make reasonable adjustments by not offering the trial period which it found had a 50% chance of being successful. Rentokil appealed this aspect. The Employment Appeal Tribunal rejected the appeal finding that the tribunal had not made an error in its findings regarding the trial period. The employer's approach of following a competitive process for the service administrator vacancies in respect of the claimant was wrong and consideration should have been given to treating the claimant more favourably than external candidates because of his disability.

Big payouts in the employment tribunal

An employment tribunal's recent decision on compensation in *Borg-Neal v Lloyds Banking Group 2022* is a salutary warning to employers handling disciplinary cases. The claimant was dismissed for using the 'N' word in an equality training session. Shocking though that may seem, the evidence showed that the claimant was actually raising a valid question when he used the word and his dyslexia had contributed to the way he expressed himself during the training session. Although the bank's zero-tolerance of racism policy was legitimate this did not excuse it from properly investigating the case before deciding to dismiss. The claimant's claims for unfair dismissal and discrimination arising from disability were upheld and he was awarded more than £470,000 compensation plus interest and tax. The award included over £300,000 for loss of future earnings taking into account the claimant's mental ill-health (which would take him 1-2 years to recover from) caused by the dismissal and the tribunal case and the difficulty he would then encounter finding suitable alternative work given his then age of 61.

Meanwhile, in a recent judgment, Hammersmith and Fulham Borough Council has been ordered to pay its former Director of Public Service Reform £4.6 million for unlawful disability discrimination. The claimant suffers with ADHD and PTSD, the latter as a consequence of her role leading the council's response to the Grenfell Tower tragedy. The tribunal found that the council dismissed her because of her PTSD. This is thought to be one of the highest ever compensation awards for disability discrimination. It is believed that the council is considering an appeal.

ECHR guidance on menopause

The Equalities and Human Rights Commission has recently published useful guidance for employers about menopause and the workplace. It explains the menopause and perimenopause, their associated symptoms and employers' legal obligations when supporting affected workers. The guidance warns of the risk of legal claims, for example, in relation to sex, age or disability discrimination that can arise if workers are not treated in accordance with the law. The guidance includes three videos covering a) how workers experiencing menopause symptoms are protected under the Equality Act 2010, b) making adjustments to support workers and c) having conversations at work about menopause. Research has shown that many women going through the menopause have given up their jobs where they felt unsupported by their employers so it is hoped this guidance will be educational and help avoid future loss of talent for this reason.

ICO guidance on sharing workers' data in a mental health emergency

Following on from its other recent guidance for employers concerning employees' personal data, the ICO has published guidance about sharing workers' data in a mental health emergency. The guidance explains that employers will not get into trouble with the regulator where an employer shares workers' information provided it acts responsibly and in the interests of the worker concerned. It gives some useful guidance on planning for this type of situation including having a written policy which staff are made aware of covering what type of information can be shared and to whom in particular situations.

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