



WORKMATTERS
The natural choice for human resources

NEWSMATTERS

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WELCOME TO THE FINAL NEWSLETTER FOR 2015

Our newsletter is written quarterly to ensure that you are kept up to date with employment issues, back copies are available on the website so you never miss out on the ever changing aspects of employment law. We offer helpful hints on how to handle situations within the workplace, but feel free to give us a call for both guidance and support.

This Quarter the focus is on changes in the law which will affect your business immediately and a look at the zero hours contracts which have come under scrutiny recently by the Government and a look at Apprenticeships for small to medium sized organisation.

- 1) The increases in the minimum wage in October 2015
- 2) Tribunal statistics update
- 3) Tribunal cases changing the law
- 4) 2016 and beyond.....

Our main topic this quarter is about Tribunals which have undergone major changes since the introduction of fees and the statistics show these changes additionally there is some brief information on cases affecting our laws.

We think you'll find the articles very interesting. Please call us on **01442 870742** to discuss any of these articles and see how we can help you and your business more effectively in the field of Human Resources. Alternatively have a look at our website www.workmattershr.co.uk and email us from there or on carolinebrode@gmail.com

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CHANGES IN THE LAW

1. New minimum wage rates

The National Minimum Wage will again increase again on the 1st October 2015.

- Adults hourly rate will increase from £6.50 to £6.70
- 18 – 20 year olds hourly rate will increase from £5.13 to £5.30
- 16 – 17 year olds hourly rate will increase from £3.79 to £3.87
- Apprentices hourly rate will increase from £2.73 to £3.30.

If you take on an employee who is of compulsory school age they are not entitled to the National Minimum Wage.

Apprentices aged 19 or over who have completed at least 1 year of their apprenticeship are entitled to receive the full minimum wage applicable to their age.

Employers are required to keep records sufficient to show they are paying workers at least the NMW. The records must be kept for three years and they may be kept on a computer or as a hard copy. However you choose to keep them you must be able to produce a single document when requested by HM Revenue & Customs or by the employee.

National living wage – for workers aged 25 and over, to run alongside the national minimum wage. The first national living wage will be set at £7.20 (which is 1 October 2015 over-21 national minimum wage rate of £6.70 plus a premium of 50p) and will apply from April 2016. The government expects the rate to rise to over £9 by 2020. The Low Pay Commission, which advises the government on the NMW rate, has been asked to also recommend appropriate levels for the NLW.

All young people to be in education or training until the age of 18 (England)



2. Tribunal update

Tribunal quarterly statistics – January to March 2015

The Ministry of Justice has published the statistics for tribunals for the period January to March 2015.

- 4,229 single claims were received. 25% less than the first quarter of 2014 and lower than the number received during the previous quarter, Oct-Dec 14.
- Overall, there was a decrease of 52% of single claims received in 2014/15 compared to 2013/14.
- Multiple claims were three times higher than the same period last year.
- The employment tribunals disposed of 11,440 claims, a decrease of 68% compared to the same period last year.
- Multiple claims accounted for 66% and single claims for 34% of the disposals.
- 21% of disposals were for equal pay cases, 17% for unfair dismissal and 15% for unauthorised deductions from wages.
- Working time claims were down 90% compared to the first quarter of 2014.
- Working time claims formed a substantial part of claims in the last quarter (Oct –Dec 14), and this was due to a surge in holiday pay claims.
- Part-time workers' claims were also down 72%.
- 9,085 issue fee remission applications were received.
- 43% of cases were awarded a full or partial issue fee remission.
- 2,957 hearing fee remission applications were received.
- 76% of cases were awarded a full or partial hearing fee remission

Tribunal quarterly statistics – April to June 2015

Single ET claims for April to June 2015 up by 19%

The Ministry of Justice has published a statistical bulletin, Tribunal and Gender Recognition Certificate Statistics Quarterly April to June 2015, which, in addition to quarterly figures, also shows some tribunal statistics for the 2014/15 financial year. The key statistics for April to June 2015 are as follows:

- The number of single claims received (made by a sole employee/worker) was 4,403 – an increase of 19% on the same period in 2014.
- The number of multiple claims received (where two or more people bring claims, involving one or more jurisdiction(s)) was 8,160, up by 69% compared to the same quarter last year.

CHANGES IN THE LAW continued...

- There were 5,400 ET issue fees requested, of which 3,700 (68%) cases had the full issue fee paid outright whilst 1,100 (21%) cases were awarded either a full or partial issue fee remission. For the remaining 600 (11%) cases, it appears that the claim was not taken further.

In the financial year 2014/15:

- 75% of claimants were represented by a lawyer at ET, up from 71% in 2013/14.
- There were 219 discrimination cases where compensation was awarded and the maximum award was £557,039 for sex discrimination.
- 1,129 successful unfair dismissal claimants received compensation; the maximum award was £238,216 and the average award was £12,362.
- The EAT received 1,200 appeals, down 30% on 2013/14.



3. Tribunal cases which change law

£183,773 compensation awarded in caste discrimination case

Earlier this year the EAT rejected an appeal to strike out Permila Turkey's (T) claim for caste discrimination. The EAT held that although 'caste' is not currently included in the protected characteristic of race in s.9(1) of the Equality Act 2010 (EA 2010), many of the facts relevant in considering caste in many of its forms might be capable of doing so, since 'ethnic origins' in s.9(1)(c) has a wide and flexible ambit, including characteristics determined by descent.

The EAT therefore ruled that if T could prove facts which demonstrated that she was treated less favourably because of caste, within the protected category of 'ethnic origins', under race, then her claim could succeed. The EAT further held that although the Government must amend the EA 2010 to specifically state that caste is protected as an aspect of 'race', but has yet to do so, that did not prevent the claim proceeding on the basis of the current law.

A Cambridge tribunal decided that caste did come within the protected characteristic of race under the EA 2010 and upheld T's claims for caste-related discrimination and failing to pay her the National Minimum Wage.

T's caste is the Adivasi, which is known as a "servant caste". T claimed that her employers, Ajay and Pooja Chandhok, treated her badly and in a humiliating way, which in part was because of her low caste status. The tribunal found that T was recruited by the Chandhoks because "they wanted someone who would be not merely of service but servile". T's unfavourable treatment, which lasted over four and a half years, included being paid as little as 11p an hour, being forced to work 18 hours a day for seven days a week, being required to sleep on a mattress on the floor, not being allowed to contact her family and having a bank account controlled by the Chandhoks.

The tribunal awarded T £183,773 to account for the underpayment of the National Minimum Wage. It is understood that there will be a further remedies hearing in November 2015 to decide on compensation for her successful caste discrimination claims. T's legal team highlighted that the case, which proceeded under the EAT's prior ruling on jurisdiction, demonstrated that workers treated less favourably because of caste are protected by the EA 2010.

Travelling time is paid time

Time spent travelling from home and back counts as 'working time' for peripatetic workers. The Advocate General Bot in *Federación de Servicios Privados del sindicato Comisiones Obreras*, a case referred by the Spanish court has expressed the opinion that, for workers who are not assigned to a fixed or habitual place of work, the time they spend travelling from home to their first customer, and from the last customer back to their homes, counts as 'working time' for the purposes of the Working Time Directive. The complainants were technicians for a security systems company and the AG found that such travelling was a part of their job and they were during that time "at the disposal of the employer". The case will now proceed to the ECJ for judgment which is not obliged to follow the AG's opinion but most often does. This may well then progress to the UK and will be considered in relation to all peripatetic workers.

Other cases in 2015 on discrimination

BELIEFS

Christian nursery assistant subject to direct discrimination because of her beliefs. In *Mbuyi v Newpark Childcare (Shepherds Bush) Ltd* the Watford Employment Tribunal held that a Christian nursery assistant, who was dismissed following a conversation with a lesbian colleague in the course of which she expressed her belief that God does not approve of homosexuality, was subjected to direct discrimination because of her beliefs. The tribunal observed that none of M's treatment was because she was a Christian but because of her belief that homosexuality is a sin. The tribunal found that this was a genuinely held belief, worthy of respect in a democratic society, not incompatible with human dignity and not in conflict with the fundamental rights of others – it rejected the attempts by the nursery to characterise the belief as homophobic and akin to racism. Given that the dismissal letter had referred to allegations which had not even been put to M at the disciplinary hearing, and had accused M of targeting the lesbian colleague when there was no evidence to back up that assertion (it was the colleague who had moved the conversation on to the church and sexuality), the tribunal considered that there may have been stereotypical assumptions about M and her beliefs such that they required a non-discriminatory explanation.

CHANGES IN THE LAW continued...

No such explanation could be provided by the nursery with the result that the claim was upheld. The tribunal also upheld the claim of indirect discrimination. It was conceded by the nursery that it had had a policy that employees should not express adverse views of homosexuality. This provision, criterion or practice placed M and others sharing her beliefs at a particular disadvantage, with the result that it required objective justification. The nursery cited 'providing its services in a non-discriminatory way [for the benefit of clients and staff] and in accordance with the Early Years framework' as its aim, and the tribunal accepted its legitimacy. However, the absolute nature of the ban on discussing such matters, and the fact that it had not been made clear to M in advance, led the tribunal to conclude that it was not a proportionate means of achieving the nursery's aim.

RELIGION

Limit on length of Jilbab at work not discriminatory In *Begum v Pedagogy Auras UK Ltd* (t/a Barley Lane Montessori Day Nursery) (Religion or Belief Discrimination) (2015) the Employment Appeal Tribunal upheld the Employment Tribunal's conclusion that the requirement that staff at a nursery should not wear any garment that might constitute a trip hazard to themselves or to the children did not mean that Ms Begum (who believed that her religion required her to wear a full length Jilbab) had suffered a detriment in relation to the manifestation of her religious belief. Ms Begum was offered an apprenticeship at the nursery but she maintained that the fact that she was not allowed to wear a

full-length jilbab was a discriminatory provision, or practice (PCP) which had meant that she was unable to accept employment with the nursery. In considering the PCP, the court considered whether the PCP applied equally to persons not of the same religion or belief as Ms Begum, whether it put Muslim staff at a particular disadvantage and whether the PCP was a proportionate means of achieving a legitimate aim. The EAT held that it could be said to be neither wrong or unreasonable.

DISABILITY

Obesity can result in a disability In *Bickerstaff v Butcher*, Belfast Industrial Tribunal, (Case No.92/14) the Belfast Industrial Tribunal held that a morbidly obese employee who was the victim of derogatory comments about his weight had suffered disability-related harassment. While obesity is not in itself a disability, its symptoms including sleep apnoea and consequent tiredness; loss of concentration; shortness of breath on minimal exertion; and poor mobility (which necessitated the occasional use of crutches) and the evidence that it was unlikely that he would lose the weight in the near future were such that the tribunal held that he suffered from a disability. This case follows the decision of the European Court of Justice in *Kaltoft v Municipality of Billund* which held that in certain cases obesity can amount to a disability where there is a limitation resulting from long-term physical, mental or psychological impairments which, in interaction with various barriers, may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers.

2016 AND BEYOND...

New legislation

Sunday trading – the government will consult on giving powers to local authorities and city mayors to extend trading in their local areas.

Apprenticeships – there is to be levy on large employers to fund 3 million additional apprenticeships over the next five years.

Termination payments – during summer 2015 the government will consult on simplifying the tax and national insurance treatment of termination payments.

Free childcare – Families where both parents work and each earns less than £150,000 per year will be eligible to receive 20% of their yearly childcare costs of up to £2,000 for each child or £4,000 if the child is disabled from September 2017.

Caste Discrimination - provisions in the ERR Act 2013 make caste discrimination unlawful under the Equality Act 2010.

Small Business, Enterprise and Employment Bill

This reached the statute book on 26 March 2015. Many of its provisions are waiting for regulations to bring them in to force,

but some took effect under a commencement order, and the government acquired the right to make regulations on others on 26 May 2015. These included:

- **zero hours** – provisions banning 'exclusivity clauses' in zero hours contracts. These clauses, tying the worker to one employer, are now unenforceable. Additional measures, such as extending the exclusivity ban to other low paid workers, and giving workers the right to make a tribunal claim if they suffer a detriment for working for another employer, were published under the previous government but these did not come into force.
- **national minimum wage** – increased penalty for underpayment. Employers paying below the minimum wage now face a fine equal to 100 per cent of the underpayment owed to each worker, up to a maximum of £20,000 per worker (previously the entire fine was capped at £20,000).
- **whistleblowing** – the government now has the power to make regulations prohibiting discrimination by NHS employers against an NHS job applicant for blowing the whistle. The government can also now make regulations requiring those bodies authorised to receive 'protected disclosures' to report annually on whether those disclosures have been investigated.

2016 AND BEYOND continued...

- **tribunal adjournments** – the power to make regulations on the number of adjournments available to employers and employees, and allow employment judges to make cost awards for late adjournments, is now law.

There are proposals in the ERR Act 2013 to introduce

- **compulsory equal pay audits** - for those employers that breach the equal pay provisions in the Equality Act 2010. New draft regulations have now been published. Tribunals will sign off audits and there will be cash penalties for non-compliance. The audit results will be published unless there are legal reasons preventing this. Micro businesses (fewer than 10 employees) will be exempt from the regulations.

No date fixed

Some provisions in the Act have yet to be given definite enforcement dates:

- **enforcing tribunal awards** – the Act creates an additional financial penalty (payable to the state, rather than claimants) for employers that fail to pay compensation awarded by tribunals. The fine will be 50 per cent of the outstanding award, subject to a cap of £5,000. This section of the legislation needs a commencement order to bring it in effect.
- **exit payments** – the state will be given the power to ‘claw back’ termination payments to public sector executives returning to the same area of work within a short period of time. Draft regulations have been published and are intended to come into force on 1 April 2016.
- **whistleblowing** - a government call for evidence on the laws protecting those who blow the whistle closed on 1 November 2013. The government published its response on 25 June 2014. There is to be more guidance on the whistleblowing legislation but the government has rejected calls for a code of practice. Bodies receiving disclosures (‘prescribed persons’), such as regulators, will be required to report annually. MPs and regulatory bodies for health and social care workers have been added to the prescribed persons list, and student nurses will become eligible for whistleblowing protection.

Trade Union Bill

The government's aim behind the bill is to “ensure that strike action only ever takes place on the basis of clear and representative mandates”. It also wants to “improve transparency and oversight of trade unions” and “give employers greater chance to prepare for industrial action and put in place contingency plans”.

Measures include:

- a minimum 50 per cent turnout in a strike ballot of those eligible to vote (current laws do not specify a participation rate)
- an additional requirement for essential services workers that 40 per cent of those eligible to vote support the action (the sectors affected

are fire, health, education, transport, border security and nuclear decommissioning)

- a requirement for more detail on the strike ballot paper about what's in dispute and the planned action, and more information for employers on the ballot result
- notice of industrial action to increase from 7 to 14 days
- the mandate to strike will last four months - action after that will require a further ballot lifting the prohibition on using agency workers to cover for strikers
- new restrictions on picketing
- changing the rules on trade unions' political funds so members will have to opt-in to contributing.

A consultation has now been published

Illegal working

Legislation will make working illegally in the UK a crime, giving the state the power to seize illegal migrants' wages; create a new single agency to pursue employers that are exploiting illegal workers; and make it illegal for employment agencies to recruit solely from abroad without advertising those jobs in the UK.

Pensions auto-enrolment

Auto enrolment on pension schemes continues to be rolled out. Organisations come within the scope of the legislation by size, according to the number of employees they have on PAYE at the Pensions Regulator website. Remaining compliance dates are:

Number of employees	Date
50 - 249	1 April 2014 - 1 April 2015
> 50	1 June 2015 - 1 April 2017
New businesses from 1 April 2012	1 May 2017 - 1 February 2018

Thank you for taking the time to read our Newsletter which I hope you found informative An e-newsletter will be sent on a quarterly basis to help keep you up to date with current legislation changes, as well as giving you some helpful hints and tips to help your business run smoothly.

In the meantime please contact us if we can be of service to you or your company.

Have an enjoyable quarter and we look forward to issuing you with our next newsletter in January 2016.

May you have a Happy and Prosperous New Year.