WORKMATTERS
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NEWSMATTERS

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WELCOME TO THE FINAL NEWSLETTER FOR 2019

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 as well as a look at the following:-

1 Employment tribunal statistics 2019

2 Summary of tribunal cases in 2019

3 Forthcoming legislation in 2020

4 Disability adjustments

Our main topic this quarter is about disability adjustments which companies have to consider to ensure they are compliant with the Equality Act 2010 which is becoming more prevalent and requires very careful managing.

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**

If you would prefer not to receive any future newsletters from Work Matters (HR) Ltd, please reply to this email with 'unsubscribe' in the title and we will remove you from our list – thank you.

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1. EMPLOYMENT TRIBUNAL STATISTICS 2017–2018

Employment Tribunal claims are up 26% year on year: There were 27,916 single claim receipts lodged between April 2017 to March 2018. There were 35,429 single claim receipts lodged between April 2018 to March **2019**. In the year 1 April 2018 to 31 March **2019** a total of 121,111 **employment tribunal** applications were made. This compares to 109,685 the previous year and 88,461 in 2016/17.

Although employment tribunal fees were declared unlawful on 26 July 2017, the 18/19 employment tribunal statistics are the first to show a full 12 month period where fees were not paid. The number of claims made against employers has increased again and we have seen an increase in the overall number of awards made in favour of claimants.

In the year 1 April 2018 to 31 March 2019 a total of 121,111 employment tribunal applications were made. This compares to 109,685 the previous year and 88,461 in 2016/17. So despite there having been no tribunal fees to be paid in the last year there is still a long way to go to get to the pre fee figure of 191,541 in 2012/13.

The detail of the statistics is worthy of note, while some of the maximum awards made have increased, the average level of awards have continued to fall with the exception of age discrimination. The highest sum awarded in an employment tribunal claim in the period 1 April 2018 to 31 March 2019 was £947,585 and was, once again, awarded in an unfair dismissal claim (bear in mind that the usual statutory cap of £86,444 for unfair dismissal claims does not apply in certain circumstances). The average and median awards for successful unfair dismissal claims were £13,704 and £6,243 respectively.

The highest award in a discrimination claim was £416,015 which was awarded for disability discrimination. Age discrimination was the only category where both the median and average awards increased from last year, the median increasing from £6,184 to £12,365 and the average from £6,796 to £26,148. There was though an overall decrease in the number of awards made in discrimination claims from 136 last year to 103 in 18/19, with no awards being made at all in sexual orientation claims.

The number of costs awards made by employment tribunals in 18/19 has plummeted to 209, having previously remained static at 479 for the preceding two years. As with last year, more cost awards were made to employers rather than claimants with the figures being 158 and 51 respectively.

The maximum costs award rocketed this year, increasing from £20,000 in 2017/18 to £329,386. The median costs award though remained fairly static at £2,400 compared to £2,409 in 17/18.

Summary of This Year

Unfair Dismissal

Maximum awarded	£947,585
Median award	£6,243
Average (mean) award	£13,704

Disability Discrimination Jurisdictions

Maximum awarded	£416,015
Median award	£12,156
Average (mean) award	£28,371

Age Discrimination Jurisdictions

Maximum awarded	£172,070
Median award	£12,365
Average (mean) award	£26,148

Race Discrimination Jurisdictions

Maximum awarded	£33,660
Median award	£7,882
Average (mean) award	£12,487

Religious Discrimination Jurisdictions

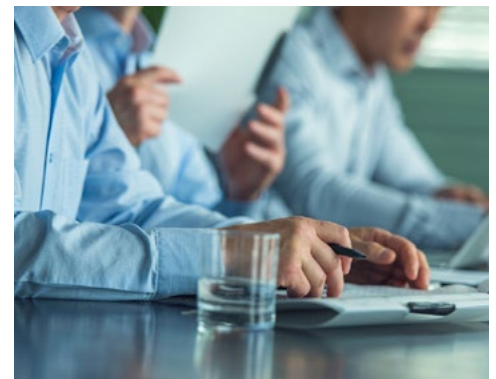
Maximum awarded	£12,000
Median award	£1,500
Average (mean) award	£4,767

Sex Discrimination Jurisdictions

Maximum awarded	£24,103
Median award	£6,498
Average (mean) award	£8,774

Sexual Orientation Discrimination Jurisdictions

Maximum awarded	£0
Median award	£0
Average (mean) award	£0



Financial Penalties on Employers Who Lose at Tribunal

The Employment Tribunal will be able to order losing employers to pay a penalty on top of any award made to the claimant. These penalties will be payable to the Secretary of State if the tribunal finds the employer has breached the employees' employment rights and has "one or more aggravating feature".

The minimum amount will be £100 and no more than £5,000, the amount shall be 50% of the amount of compensation awarded with a 50% discount for employers who pay within 21 days of the tribunal's decision. The tribunal will look at the employer's ability to pay in deciding whether to order the employer to pay a penalty.

2. EMPLOYMENT TRIBUNAL DECISIONS IN 2019

1. Analyst with Autism Wins Discrimination Claim After Being 'Overwhelmed' by Office Environment

A senior analyst on the autism spectrum has won a claim for indirect disability discrimination after his employer failed to make reasonable adjustments for his condition.

Tom Sherbourne worked at energy supplier Npower in an open-plan setting with a busy walkway behind him, and a Leeds employment tribunal (ET) heard it was not very long before he felt overwhelmed and distracted. He also became distressed about changes to his working environment and different people sitting near him due to the flexible working policy.

The tribunal ruled that Npower had suffered a "continuous management failure" after it failed to take reasonable steps to understand Sherbourne's disability and failed to implement two sets of reasonable adjustments, one of which was recommended by its own in-house doctor.

2. Employee with Diabetes 'Humiliated' at Work Awarded £14k for Disability Discrimination

An employee with type 1 diabetes who was left feeling "intimidated, under the spotlight and concerned for her job" was awarded £14,000 for disability discrimination and harassment.

An East London ET ruled that from the outset of her two months' employment as a fleet administrator at Weston Homes, Holly Carr was "humiliated" and "highly embarrassed" as a result of the treatment she received at the housing company.

The court heard of several incidents during Carr's employment. In one incident Carr, who was being taken around the office to meet to first aiders, was introduced to people in the office as "This is Holly, she's a diabetic". In a separate incident Carr was warned by her line manager she would be "sacked on the spot" if she told the chairman's PA the reason she was late was because she felt unwell due to low blood sugar.

3. NHS Worker Was Unfairly Dismissed After Vision Problems Led to Admin Errors

An NHS administrator has been awarded £15,039 after her employer unfairly dismissed her for repeated administrative errors she made when she rapidly developed cataracts.

Ashford ET ruled that Kent Community Health NHS Foundation Trust had unfairly dismissed Denise Regan after it repeatedly set "unrealistic targets" for performance improvements despite her health condition.

Judge Anna Louise Corrigan said although the trust had initially followed a fair capability procedure, it was not reasonable for it to "persist in requiring improvement" once Regan's visual impairment was known – "at least not without medical confirmation she could achieve the improvement required".

4. Employee Was Unfairly Dismissed After Announcing Pregnancy Three Weeks into New Job

A pregnant office worker whose dignity was "violated" as a result of a "hostile, humiliating and offensive" work environment has won tribunal claims for unfair dismissal and pregnancy discrimination.

The East London ET ruled that Eilise Walker was subjected to unfavourable treatment by her employer, Arco Environmental, and was made to feel "intimidated and degraded" because of the perceived inconvenience her pregnancy would cause the business.

The tribunal heard the firm's managing director, Ron Heyfron, conceded he "probably did panic about the HR issues" he perceived the pregnancy would cause, and employment judge Bernice Elgot held the respondent was "in a situation where none of the senior managers had dealt with maternity arrangements before".

5. Probation Officer Accused of 'Aggressively Abusive' Relationship with Offender Wins £60,000 for Unfair Dismissal

A probation officer accused of developing an abusive and controlling relationship with a former offender has been awarded £60,000 for unfair and wrongful dismissal.

Julia Hyland, a probation officer at Cheshire & Greater Manchester Community Rehabilitation Company, was dismissed after a service user alleged she developed an "aggressively abusive, unstable sexually abusive, controlling, narcissistic, jealous, manipulative and needy" relationship with him.

But a Manchester ET ruled Hyland was unfairly dismissed because the investigation into the "complex" and "highly unusual" case was insufficient considering the claimant was facing potentially career-ending allegations. Employment Judge Sherratt added there was a failure to adequately seek evidence in her defence.

3. FORTHCOMING CHANGES TO EMPLOYMENT LAW IN 2020

This table shows forthcoming changes.

31 October 2019	Date the UK is expected to leave the European Union
April 2020	Paid parental bereavement leave expected to be introduced
6 April 2020	Changes to taxation of termination payments
6 April 2020	New law prohibiting use of Swedish derogation agency contracts takes effect
6 April 2020	New law lowering the threshold required for information and consultation requests takes effect
6 April 2020	New day-one right to a written statement of main terms and conditions for workers and employees comes into force
6 April 2020	Amendments to mandatory information required within a statement of main terms and conditions comes into force
6 April 2020	New law extending the holiday pay reference period to 52 weeks takes effect
6 April 2020	New law requiring employment businesses to provide all agency workers with a Key Information Document takes effect
30 April 2020	Deadline for agency workers on Swedish derogation agency contracts to be provided with an explanatory statement
30 December 2020	EU Settlement Scheme closes to applicants
1 January 2021	New immigration scheme comes into force for all applicants regardless of nationality
Mid-2020s	Reforms to automatic enrolment to be introduced
To be confirmed	New law prohibiting confidentiality clauses in contracts or settlement agreements from preventing disclosures to the police, regulated health and care or legal professionals to be introduced
To be confirmed	New law requiring confidentiality clauses to set out their limitations to be introduced
To be confirmed	Laws on criminal record disclosures to be amended, reducing the disclosure period for sentences lasting four years or less
To be confirmed	Redundancy protection for new parents to be extended
To be confirmed	New law introducing right for all workers to request a more predictable and stable contract after 26 weeks' service to be introduced
To be confirmed	New law to increase break in continuous employment from one week to four weeks to be introduced
To be confirmed	New law preventing deductions from 'tips' to be introduced
To be confirmed	New legislation to clarify employment status tests to be introduced
To be confirmed	New law introducing tribunal sanctions where organisations commit repeated breaches to be introduced
To be confirmed	Extension of shared parental leave to grandparents

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4. DISABILITY ADJUSTMENTS

Reasonable Adjustments for Disabilities: Seven Examples for Employers

The Equality Act 2010 imposes a positive obligation on employers to make reasonable adjustments that will assist disabled individuals. While employers may be familiar with the duty, sometimes it is not straightforward deciding what is "reasonable". We explore some of the key factors as we look at seven situations where adjustments were found to be reasonable.

Duty to make reasonable adjustments

Section 20 of the Equality Act 2010 imposes a duty on all employers to make reasonable adjustments to any provision, criterion or practice (PCP) applied by them, or physical feature of their premises, that puts a disabled person at a substantial disadvantage. Employers must take such steps as it is reasonable to have to take to avoid the substantial disadvantage.

The Equality and Human Rights Commission's "Employment Statutory Code of Practice" states that factors that employers should consider include:

- if taking any particular step or steps would be effective in preventing the substantial disadvantage;
- the practicability of the step;
- the financial and other costs of making the adjustment and the extent of any disruption caused;
- the extent of the employer's financial or other resources;
- the availability of financial or other assistance to help make an adjustment (such as advice through Access to Work); and
- the type and size of the employer.

What a reasonable step is for an employer to take will depend on all the facts of each individual case.

Employment Statutory Code of Practice

The duty applies at all stages of employment, from recruitment through to termination and dismissal.

The duty is triggered where:

- an employer knows, or reasonably ought to know, that an individual is disabled; and
- the individual is likely to be placed at a substantial disadvantage because of their disability.

1. Parking Spaces

Employers that have premises with car parks should consider if the particular disadvantage sustained by the disabled employee would be addressed by having a designated parking space or some alternative car parking provision. This could be as a single adjustment or as part of a package of reasonable adjustments.

In **Environment Agency v Donnelly EAT/0194/13**, the Employment Appeal Tribunal (EAT) upheld the employment tribunal finding that the employer had breached its duty by failing to provide a car parking space for an employee with osteoarthritis. The EAT agreed with the tribunal that the requirement for the employee "to walk a distance from her car to the office in the prevailing cold weather and possibly on uneven surfaces was clearly a provision criterion or practice that significantly disadvantaged her".

2. Internal Meetings

If an employee's disability impacts on their ability to take notes or recall the details of a meeting, employers should consider making reasonable adjustments. These could include allowing the employee to record the meeting, offering the services of a note-taker or giving the employee extra time to take notes during the meeting.

Where the PCP affects the disabled employee more, then the duty for the employer to make reasonable adjustments arises.

In **Perratt v City of Cardiff Council EAT/0079/16**, the employee had a number of disabilities, which affected her memory and meant she struggled to cope when her duties were expanded. The EAT held that, because the employee was less able to remember what was said in a meeting than most other employees, recording a meeting could be a reasonable adjustment.

3. Recruitment Tests

In certain circumstances, it may be a reasonable adjustment for employers to allow a job applicant extra time to complete a recruitment test or other assessment. Employers should also consider if it would be a reasonable adjustment to modify the form of the test, for example putting it in audio, Braille or a large print format.

In **Government Legal Service v Brookes [2017] IRLR 780 EAT**, the EAT held that the requirement for a job applicant with Asperger's syndrome to complete an online multiple-choice psychometric test was not a proportionate means of achieving the legitimate aim of testing the ability of applicants to make effective decisions and was not justified. Modification of the test format for the applicant to allow her to give short written answers would have been a reasonable adjustment for the recruiter to have made.

4. DISABILITY ADJUSTMENTS

4. Hot-Desking

While hot-desking helps increase communication among members of staff, there are some drawbacks as it operates on a first-come, first-served basis. This can put employees who need additional time to travel to work for medical reasons at a substantial disadvantage compared with others.

In **Roberts v North West Ambulance Service EAT/0085/11**, an employee with a social anxiety disorder worked in a busy control room with other dispatchers who hot-desked. His managers took steps to have a seat available for him whenever possible, but this was often difficult to achieve due to the overlapping shift system. The tribunal dismissed his claim because the employee had not been required to hot-desk himself.

In allowing the appeal, the EAT held that the tribunal should have examined if the hot-desking arrangement placed the employee at a substantial disadvantage because his desk was not always available and, if so, should have considered if his employer took reasonable steps to avoid the disadvantage.

5. Performance Issues

Before starting any performance management process, employers should consider if the performance issues may be related to a medical condition that could amount to a disability. This is particularly the case where a long-term employee is showing signs that they are having problems performing their normal duties.

In **South Staffordshire & Shropshire Healthcare NHS Foundation Trust v Billingsley EAT/0341/15**, the EAT found that the employment tribunal was entitled to find that the performance review and dismissal of an employee with dyspraxia were discriminatory because the employer had not made the necessary reasonable adjustments to allow her the chance to improve her performance. In particular, the tribunal had found that the employer had failed to put in place 30 hours of specialist tuition, which would have improved the employee's accuracy rate and "could have avoided the need for performance management".

6. Pay Protection

In certain circumstances, it may be a reasonable adjustment to protect the pay of a disabled employee who is moving to a more junior post because they are unable to carry out their current role. Employers should consider all the surrounding circumstances before discounting this as a reasonable adjustment, such as the cost of protecting the employee's pay, whether it is likely to be a long- or short-term change, and the financial resources of the business.

In **G4S Cash Solutions (UK) Ltd v Powell [2016] IRLR 820 EAT**, the EAT held that pay protection should not be excluded as a "step", because it is no more than another potential form of cost and the objectives of the discrimination legislation "plainly envisage an element of cost to the employer".

The duty to make reasonable adjustments is not a duty to consider, it is a duty to take a concrete step or steps.

However, the EAT added that it did not expect it will be an "everyday event" for a tribunal to conclude that an employer is required to make up an employee's pay long term as each case will turn on its own facts. The EAT also made it clear that what is a reasonable adjustment at one point may at some time in the future not be reasonable.

7. Sick Pay

If an employee is on disability-related sickness absence an employer will not normally be required to make adjustments to its sick pay policy.

In **O'Hanlon v The Commissioners for HM Revenue & Customs [2006] IRLR 840 EAT**, the EAT said: "it will be a very rare case indeed where … merely giving higher sick pay than would be payable to a non-disabled person who in general does not suffer the same disability-related absences, would be considered necessary as a reasonable adjustment." The EAT reached a similar conclusion in Royal Bank of Scotland v Ashton EAT/0542/09 & EAT/0306/10.

However, both O'Hanlon and Ashton recognised that there may be exceptional cases where enhanced sick pay could be required as a reasonable adjustment. For example, in Nottinghamshire County Council v Meikle [2004] IRLR 703 CA, the employee had a visual impairment and her employer had not made reasonable adjustments to accommodate this impairment. It was only because her employer had not made those reasonable adjustments that she was off work. In those circumstances (ie the employee was off work sick because of the employer's failure to make reasonable adjustments), the Court of Appeal held that paying sick pay beyond what the employer would normally pay would be a reasonable adjustment.

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 2020.

May you have a Happy and Prosperous New Year.

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