

# EMPLOYMENT UPDATE



Reynolds Parry Jones  
SOLICITORS

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## Employment Status—Two Recent Cases Reviewed

The Supreme Court has held that 20 car valeters who signed contracts stating that they were self employed were actually employees and were therefore entitled to the minimum wage and holiday pay.

The valeters were aware of the implications of self employment before they signed the contracts, paid their own tax and had to purchase insurance and uniforms. The contracts stated that they were under no obligation to attend work and that they were entitled to send a substitute contractor in their place if they could not make it.

The Court held that they were employees because the contracts were a sham. The reality was that they had to turn up and had to provide services personally. The contract was not therefore representative of the reality.

In another case, a partner in a solicitor's firm who was entitled to a "guaranteed profit share" of £55,000 plus one eighteenth of the net profits of the firm was held to be an employee. Although each case will depend upon its facts, it was found to be relevant in the present case that the solicitor had no capital stake in the firm and was not liable for any losses that the firm might incur in the normal course of business. The full equity partners also exercised a significant degree of control over him.

## Wage Cutting Proposals

An employee who refused a 5% pay cut was fairly dismissed after his 76 colleagues accepted the cut.

The business needed to boost profits and consulted the workforce on the cuts. The employee who refused to accept the cuts had his contract terminated and was then offered a new contract on a reduced salary.

The Tribunal initially allowed his claim on the basis that the 5% pay cut was not necessary to ensure the survival of the firm but this was overturned by the EAT who stated that this test had been rejected in previous decisions.

The matter was referred to a fresh Tribunal to consider the fairness of the dismissal taking into account the correct legal tests.

## Care in the Community

It has been held that employees in a care home run by Nottinghamshire Healthcare NHS Trust did not transfer automatically when residents were moved to their own flat and were cared for by two new independent care providers.

There was no transfer of an economic entity that had retained its identity nor a service provision change.

The activities carried out by the new providers were not fundamentally or essentially the same in that residents were to be given more autonomy re domestic tasks and such full staffing was not required.

The Trust was therefore liable to the employees that they were obliged to retain (e.g. in relation to re-deployment or redundancy and associated costs).

## Implied Term Ruling

The EAT has held that there was no implied term in a locum consultants contract of employment that he would be notified of new consultant's contracts in the NHS.

The EAT held that the locum could reasonably be expected to make himself aware of new consultant posts and, in fact, was actually aware of them!

## Fair Dismissal - HGV Licence Lapse

Two HGV drivers who were obliged to submit to a medical examination at age 45 and who mistakenly failed to do so (causing their licences to expire) were fairly dismissed for driving without a valid licence and insurance.

They were initially successful at Tribunal on the basis that no injury was caused by the omission. However, this was rejected by the EAT who held that the employer was entitled to dismiss taking into account the potentially horrific consequences of the error.

## Arbitrator was Not in Employment

The Supreme Court has held that it was not contrary to the Employment Equality (Religion or Belief) Regulations for the parties to a contract to insist on the appointment of an arbitrator from the Ismaili community—a branch of Shia Islam. Such an arbitrator would not be in employment but would be an independent provider of services.

## In the Course of Employment?

An employee taking part in a cycling race organised by his employer was not "at work" or "in the course of his employment." He therefore had no claim against his employer for head injuries suffered on colliding with another cyclist.

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