

EMPLOYMENT UPDATE



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SOLICITORS

October 2011

Dismissal for Facebook Comments was Unlawful

An employee wrote in a private Facebook post "I think I work in a nursery and I do not mean working with plants." After another comment she then wrote "Don't worry, takes a lot for the bastards to grind me down." An ex employee of the employer in question then commented "Ya, work with a lot of planks though!" to which the employee responded "2 true".

An Employment Tribunal held that the comments were relatively mild. It also took into account the employee's previous exemplary employment record and other mitigating factors and the fact that she had apologised. Finally, the Tribunal noted that the Employer had not properly investigated allegations that the posts might have damaged the relationship between the Employer and one of its key clients.

As a result, the Tribunal felt that dismissal was outside the range of reasonable responses and was therefore unfair. However, it reduced the Employee's compensation by 20% due to her contributory fault.

The decision is yet another warning to employers that they cannot just dismiss employees for any comments made on Facebook or other social networking sites without full consideration of the issues involved.

'Reasonable Adjustment' and Disability Discrimination

The EAT has provided some important clarification in disability discrimination claims as to the meaning of the word 'reasonable' in the term 'reasonable adjustment' under the Equality Act 2010.

Essentially, a "good or real prospect" of the adjustment removing the disabled persons disadvantage is not required. All that is required as a minimum is "a prospect" that the adjustment will alleviate the disadvantage.

However, the Equality and Human Rights Commission's guidance states that "ultimately the test of 'reasonableness' of any step an employer may take is an objective one and will depend on the circumstances of the case".

Dismissal for Working in Second Job Whilst Off Sick

Imperial College Healthcare NHS Trust (Imperial) unfairly dismissed an employee on sick leave when it found that she was working at the same time in her second job.

It had concluded that she had intentionally defrauded them and had refused to take account of a letter from the Employee's GP that she was fit to work in her second job but not her first.

On appeal Imperial changed its position, relying on the employee's failure to inform her manager thereby preventing them from putting her on alternative duties.

Whilst the dismissal was held to be unfair, the EAT held that the employee's compensation should be reduced by 30% for contributory fault.

£100,000 Record Cost Award

An employer has succeeded in obtaining a record cost order for £100,000 against an employee who brought a 'false and malicious' discrimination and victimisation claim.

Costs awards against employees are rare (only 132 in 20010/11) and are usually capped at £10,000 (although the median award is £1,000). However, the limit can be dispensed with, as in this case, if the Tribunal finds that the employees action is false and malicious.

Cost warnings can be a useful way of deterring employees from bringing spurious claims but employers must consider the likelihood of recovering costs from employees even if they are awarded!

Unfair Dismissal Qualifying Period Increase and Tribunal Fees

The Government has announced its intention to increase the general qualifying period for employees seeking to claim unfair dismissal from 1 to 2 years as well as introducing a fee for submitting a claim in an Employment Tribunal.

The proposal will be good news for employers seeking to limit their exposure to employment claims but is bad news for employees with genuine claims who may be denied access to justice if and when the reforms are introduced.

Point of Reference!

The Court of Appeal has held that an accurate reference, which an employer had provided, about a former employee that referred to allegations made before the employee's departure but which were stated not to have been investigated further due to the employee's departure was fair in all the circumstances.

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