



EMPLOYMENT UPDATE

Reynolds Parry Jones
SOLICITORS

ISSUE 9 - August 2008

Lords Limit Disability Claims

The House of Lords has held that:-

- a) an employer can only be guilty of discriminating on disability grounds if they know the employee is disabled;
- b) dismissal for 'a reason which relates to the disabled person's disability' must be construed narrowly (e.g. if an employee is dismissed for a long period of sickness absence then that is the reason and not the underlying disability); and
- c) the correct comparator is someone to whom the underlying reason still applies (in this case someone who was also off on long term sickness absence but who was not disabled)

Although the case concerned a housing matter, it is likely that the narrow construction in this case will make life easier for employers with long term sickness / disability discrimination claims against them.

A Grievance or Not a Grievance

That was the question for the Employment Appeal Tribunal in *Procek v Oakwood Farms Ltd* when faced with a letter of complaint that stated that it was **not** a grievance.

The EAT held that the letter was clearly a grievance despite the *caveat*. Because it was not recognised as such by the employer, they had failed to follow the statutory procedure

Minimum Wage Prosecution

The owners of a Yorkshire butchers shop were ordered to pay £10,000 in compensation to 2 former employees and costs after they broke various sections of the National Minimum Wage Act and then proceeded to conceal what they had done by falsifying records and misleading HMRC.

Further Details of Equality Bill Released

At the end of last month the Government published its "Framework for a Fairer Future—The Equality Bill" which aims to place all discrimination legislation in one Act to be written in 'plain English'

It is proposed that the following will be included:-

- Allowing employers to positively discriminate against equally qualified candidates to address under-representation at work
- An attempt to reduce the gender pay gap by outlawing pay secrecy clauses in employee contracts

- Allowing Tribunals to make recommendations in discrimination claims to an employers' wider workforce
- Create a single equality duty on public bodies
- Make age discrimination unlawful in the provision of goods and services

This last age discrimination provision in particular is going to have far reaching consequences, particularly for small and medium sized business. We will update you on these developments as they happen.

Employee Awarded £36,000 in Age Discrimination Claim

Employers are hopefully now fully aware of the default retirement age of 65 unless a lower age can be objectively justifiable. In *Plewes v Adams Pork Produce Ltd* the employer had a retirement age one day before age 65 to enable employees to claim their pension on their 65th birthday. The employer had even gone through the statutory retirement procedure under the Age Regulations prior to dismissal.

The Tribunal held that the retirement, being before age 65 (albeit only by one day) was unlawful unless objectively justified on grounds of age (of which there was no evidence). The employer had also unwittingly failed to follow the statutory dismissal procedure and the Tribunal awarded the maximum uplift in damages of 50% in this respect.

The employee was awarded £36,332.70 which included an award of £7,500 for injury to feelings. Although the case does not make new law, it acts as a reminder to employers that they must make absolutely sure that they know the law and use the correct procedures.

Union Complaints Invalid as Grievances

Complaints written to an employer by the Transport and General Workers Union in an equal pay claim failed to comply with the statutory dispute resolution procedures. The complaints did not refer to individual employees and the Union could not be said to be acting as 'agent' of all or any of the individual employees.