



AC AS Annual Report Statistics

The ACAS annual report shows a recession related increase in unfair dismissal claims by 29% from 33,352 to 43,028 with a large increase in the number of enquiries to their free helpline in relation to such matters as redundancy, lay-offs and business transfers.

However, total claims fell by 8%, mainly due to a substantial reduction in equal pay and working time claims.

Retirement Age Review

The Government has brought forward its review of the default retirement age from 2011 to 2010. In its ambiguously worded 'Building a Society for Ages' it states that the review has been brought forward to reflect the '..change in economic circumstances'.

Effective Date of Termination

Employees have 3 months from the Effective Date of Termination ("EDT") to bring a claim for unfair dismissal before an Employment Tribunal. However, if employment is terminated without notice, the EDT is "the date on which the termination takes effect."

The Court of Appeal has confirmed that the 'date on which termination takes effect' is the date that notice of termination is actually opened by the employee. On the facts, the employee was told to expect notice of the outcome of Tuesday's disciplinary hearing that Thursday. It was sent by recorded delivery and was signed for by someone other than the employee (who was away) that Thursday. The employee did not open the letter until the following Monday. The employee was thereby within the 3 month 'window' and her claim was accepted.

Meaning of 'Likely' in the Disability Discrimination Act 1995

Under the Disability Discrimination Act 1995 a person is disabled if he has a 'physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day to day activities'.

The Claimant suffered from hoarseness caused by nodes on their vocal chords. The issues before the court were:-

1. whether the adverse impact was '**likely**' to continue if corrective measures were not taken; and
2. whether the adverse effects were '**likely**' to recur in the future.

The House of Lords, rejecting previous authority, decided that the word 'likely' in such contexts means 'could well happen' as opposed to the occurrence being 'more likely than not'. Essentially, a possibility of continuation is now sufficient whereas it was previously thought that a greater than 50% chance of continuation was required.

The ruling is good news for the disabled employee but another potential 'headache' for employers trying to grapple with the implementation of this complex and wide ranging legislation.

Human Rights Challenge Facilitates Legal Representation

It is generally the case that employees subject to disciplinary proceedings are entitled to be assisted by a work colleague or recognised union representative at disciplinary hearings but **not** legal representation by a solicitor, barrister or other legal representative. However, a recent ruling by the Court of Appeal has changed the position and allowed representation by solicitors and barristers in relation to public sector disciplinary proceedings where the allegations against them are of such gravity that the employee may be prevented from working in the future if the allegations are upheld.

An NHS doctor successfully brought the action against Milton Keynes NHS Trust under article 6 of the European Convention on Human Rights which enshrine the right to a fair trial. Whilst the ruling was specifically about NHS doctors, the ruling is wide enough to apply to all public sector workers. However, the ruling does not have direct application to those employees who work in the private sector at present.

Laughing Gas Doctor Continues to Practice

A Senior House Officer who inhaled the 'laughing gas' Entonox on at least four occasions and encouraged several nurses to do the same at what was described as an 'Entonox party' has been allowed to continue to practice in the NHS under supervision.