

EMPLOYMENT UPDATE



Reynolds Parry Jones
SOLICITORS

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Sexual Orientation - Harassed or 'Over-Sensitive'

The use of inappropriate language, or as one judge described it, 'industrial language', in the workplace has always caused difficulty for employers. The 'injured party' may claim that they have been harassed and the 'aggressor' may claim that the injured party is 'over-sensitive'.

In a recent case a gay employee, Mr Grant, transferred from the Land Registry office in Lytham to its office in Coventry. His colleagues in Lytham knew he was gay but Grant didn't want his colleagues in Coventry to know. Unfortunately, his new female line manager made a number of remarks to Grant's new female colleagues including "There's no point in fluttering your eyelashes at G. He's gay."

Under the Employment Equality (Sexual Orientation) Regulations 2003 it is unlawful to harass another *on the grounds of* sexual orientation. However, whilst it was accepted that the line manager had treated Mr Grant differently because of his sexual orientation it was held that the line manager did not intend to harass him and that he was being over-sensitive.

If you think, however, that the ruling provides employers with a defence it is not likely to have any lasting effect. The Equality Act 2010 which comes into force on 1st October this year removes the words "on grounds of" from the definition of harassment. This means that the unwanted conduct only has to be linked to, rather than being as a result of, a protected characteristic (in this case, sexual orientation).

Minimum Wage Reminder

Employers are reminded that the adult minimum wage which increases from £5.80 to £5.93 on 1st October will now apply from the age of 21 (previously 22).

It is thought that 85,000 workers will be elevated into the adult category as a result, with increasing costs for business.

The rate for 18-20 year olds increases from £4.83 to £4.92 and for 16-17 year olds, £3.57 to £3.64. There is also a new apprentice rate of £2.50 for those under 19 or 19 and over but in their first year of their apprenticeship.

The daily accommodation offset increases from £4.51 to £4.61.

Employment Dispute Trends

The number of Employment Tribunal claims increased by 56% this year. The increase is partly accounted for by multiple working time claims in the airline industry. However, 71,300 single claims were accepted which represents an increase of 14% on last year's figures.

There were 126,300 claims associated with breach of contract, unfair dismissal and redundancy which partly reflects the economic downturn.

Of the claims disposed of by the Tribunal, 32% were withdrawn, 31% were settled following ACAS conciliation and 13% were successful at a Tribunal hearing.

Compensation - Failure to Consult

The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") requires employers to consult with employees prior to the transfer of the business to another entity. Failure to consult can result in a Tribunal awarding affected employees up to 13 weeks pay each.

In the case of *Todd v Strain*, the Employment Appeal Tribunal held that a failure to consult staff over pay arrangements (which were wholly administrative and had no effect on the level of pay) meant that the employer was in breach of the requirement to consult.

The EAT awarded each affected employee 7 weeks pay by way of compensation. There were 22 employees in total.

'Loss' and 'Theft' Distinguished

A female employee who was formally accused of "Loss of £3,000 cash banking/inaccuracy in banking" was unfairly dismissed because the evidence given by the employer at the hearing wholly related to the employee's alleged theft.

After reviewing the case law, the Tribunal concluded "...it is a fundamental right that someone who is being accused of dishonesty should have that point made to them."

Whilst the ruling went against the employer, the case was sent back to the original tribunal that heard the case to decide on the level of compensation that should be awarded which may well be minimal due to the findings of fact in relation to the employee's theft. However, whatever the outcome, the EAT ruling was the seventh time that the case had been considered by a judge and the employer is unlikely to be able to recover any of their associated legal costs.

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