

# EMPLOYMENT UPDATE



**Reynolds Parry Jones**  
SOLICITORS

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## Employment Status Update

The Employment Appeal Tribunal has held that a dentist who had a genuine contractual right to substitute his services for those of another dentist was not a "worker" because he was not obliged to "perform personally any work or services." He therefore had no right to bring a claim before an Employment Tribunal for unlawful deductions from his wages.

Under such circumstances there will often be a contractual right to sue in the County Court for breach of contract but this will be an entirely separate remedy beyond the realms of employment law as such and will depend on the wording of the contract of service in any event.

The EAT said that the outcome, however, might be very different if the right of substitution was not genuine or was qualified in some way. For instance, some contracts state that an individual will only have the right of substitution if they are 'unable' to perform the service personally through ill health.

Any business thinking of recruiting individuals on a self employed basis (as opposed to employee or worker status) should seek early professional advice as the tax and employment law consequences of 'getting it wrong' are serious and employers can find themselves 'unravelling' transactions that were entered into with the best of intentions often years previously.

## Equality Law Not For Voyeurs or Those with Tattoos

The Government has ruled that tendencies to steal or set fires, voyeurism and exhibitionism are excluded from the definition of 'disability' for the purposes of attracting legal protection under the disability discrimination provisions of the new Equality Act 2010.

Individuals with tattoos and piercings are also excluded from protection under the Act if they are victimised or discriminated against specifically for that reason.

Generally, a 'Disability' is a physical or mental impairment lasting for more than 12 months which has a substantial impact on an individual's ability to carry out normal day to day activities.

## UK Border Agency Produces Practical Employer Guidance

The UKBA has produced a helpful and practical guide on "Preventing Illegal Working, Asylum Seekers and Refugees".

The aim of the guidance is to protect employers from incurring significant criminal and civil penalties in employing people with no legal right to work in the UK.

The guide sets out the obligation on employers to check the entitlement of all new employees to work in the UK and gives examples of documents which provide such satisfactory evidence.

The guidance also has a useful 'question and answer' section which will guide employers through the most frequently encountered problems.

## Council Employee Fairly Dismissed

A homelessness officer employed by Wandsworth Borough Council was held to have been fairly dismissed after telling a woman with an incurable disease that she should "...put her faith in God."

He allegedly subjected her to a 30 minute 'barrage' where he is claimed to have said that she should not bother with doctors.

The Council said, in the course of proceedings, that his behaviour was "inappropriate" and "unacceptable".

The employee's claims for unfair dismissal, breach of contract and religious discrimination were all dismissed.

## Ability to Pay Irrelevant

The case of Tao Herbs and Acupuncture Ltd v Mrs Y Jin the Employment Appeal Tribunal has held that the ability of an organisation to pay a compensatory award in unfair dismissal proceedings is not a relevant consideration.

After approving an award of £11,000 the EAT stated "...the possibility that the employer will be in difficulty paying an award is not a relevant consideration." This will be the case even if the size of the award puts the organisation into insolvency.

## Teacher Victimisation Award

A teacher who was victimised over a four month period has been awarded £14,000 for injury to feelings, £5,000 in aggravated damages and, in principle, 5 years loss of future earnings.

However, a recommendation that the headmistress sends a letter to all parents and teachers saying the allegations were unfounded was amended on appeal.

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