



Employment Law Update

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Agenda



- Employment Tribunal Compensation
- Rate increases
- Gender Pay Reporting
- Case update
- Hot topics
- Mental health – a legal perspective
- Gig economy



Employment Tribunal Compensation

Statutory Compensation

Tribunal compensation limits have increased from 6 April 2018. The current rates are as follows:

- A week's pay - £508
- Maximum basic award for unfair dismissal and statutory redundancy payment
£15,240 – (currently £14,670)
- Maximum compensatory award for unfair dismissal
£83,682 or a year's gross pay, whichever is lower - (currently £80,541)
- Unless an "uncapped claim" e.g. discrimination, whistleblowing etc.



Employment Tribunal Compensation

Injury to Feelings compensation

New bands in place from 6 April 2018

- Lower band (less serious cases): £900 to £8,600
- Middle band: £8,600 to £25,700
- Upper band (the most serious cases): £25,700 to £42,900
- Exceptional cases: over £42,000

These bands may now be reviewed on an annual basis



- From 6 April 2018
- All payments referable to notice pay will be subject to tax and NICs
- The £30,000 exemption from tax and NICs for termination payments still in place
- From April 2019 payments over £30,000 subject to employer NICs

Practical advice

- Reduces incentive in settlement cases
- Include PILON clauses in all contracts limited to basic pay

- The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017
- The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 – listed public sector employers
- Over 250 employees
- “snapshot date” **5 April or 31 March**
- Should have published reports by 4 April or 30 March 2018
- **Annually thereafter**
- Publish on organisation’s website and designated government website

What we know so far....

- More than 10,000 employers published data, with more than 1,000 reporting on the last day and in the region of 1,500 missing the deadline.
- 78% of private sector employers pay men more than women, with only 8% reporting no pay gap at all. 90% of public sector employers pay men more.
- National median pay gap was reported to be 9.7%, significantly lower than the national GPG of 18.4% recorded by the Office of National Statistics.
- Financial services highest sector gap (35.6%), Lowest gap is the accommodation and food services sectors (1%)
- Ryanair (71.8%)

The EHRC has called for employers to tackle their gap by;

- Reviewing flexible working practices,
- Tackling conscious and unconscious bias,
- Addressing pregnancy and maternity pay discrimination

The EHRC has consulted on enforcement mechanisms

- Written notices
- Action plans
- Fines



Case update

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The EAT has held that it is not direct sex discrimination for an employer to offer enhanced maternity pay and fail to pay enhanced shared parental pay in line with this

Capita Customer Management Ltd v Ali

- EAT concluded that a father was not discriminated against on the ground of sex
- the correct comparator would therefore be a woman on shared parental leave, who would have been given SPL on the same terms as A received



Employers duty beyond statement of fact references

Hincks v Sense Network Ltd

- duty of care needed when an employer expresses an opinion in a reference
- employer provided a reference that included negative statements of opinion based on a previous internal investigation
- Court held that it was difficult to prescribe the standard of care to be exercised by a reasonable reference writer
- the Court did however identified certain common features of the duty

López Ribalda and others v Spain

5 employees dismissed for theft from a supermarket

Based on CCTV footage

Found to be a breach of privacy by ECtHR

ICO guidance, only covertly monitor where;

- Specific and targeted
- No reasonable alternative
- Privacy impact assessment carried out

Royal Surrey County NHS Foundation Trust v Drzymala

- Non-renewal of fixed term contract resulted in unfair dismissal
- Demonstrate “fair in all the circumstances”
- Need to consider all alternatives
- Provide right of appeal

- Equal pay in the private sector – supermarkets leading the way . . .
- Sexual harassment in the work place – employers to ensure appropriate action taken and create appropriate culture
- National living wage challenges
- Industrial action
- The response to the Taylor Review – four open consultations extending protection for casual and zero hours staff.



Mental health at Work

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- Work can have a positive impact on health and wellbeing;
- Work can also have a negative impact on health and wellbeing, including causing or contributing to stress-related illnesses;
- Employers need to be aware of their legal obligations and good practice.

- 1 in 6 workers have a mental health problem right now
- Mental health issues account for 39% of work related absence
- 11.3 million working days are lost a year



The term “*mental health*” is not legally defined but refers to a continuum that includes:

- emotional well being
- mental health conditions; and
- mental illness

Legal Framework

- Equality Act 2010
 - Disability is protected characteristic
 - Physical or mental impairment which has a substantial and long term adverse effect on a person's ability to carry out normal day-to-day activities – section 6 of Equality Act 2010

Is mental health protected in law?

- health and safety legislation
- personal injury
- constructive dismissal
- discrimination claims under the Equality Act 2010
- harassment under Protect & Harassment Act 1997

The law covers recruitment, employment and dismissals for any reason, including redundancy.

- Direct discrimination
- Indirect discrimination
- Discrimination arising from disability
- Harassment
- Victimisation
- Duty to make reasonable adjustments
- NB - No qualifying period of service
 - No cap on compensation



Negligence/Personal Injury

- Duty to take reasonable care
- Reasonable foreseeability
- Causation
- Recognised psychiatric disorder

- Mental health, like physical health, can fluctuate on a spectrum from good to poor.
- Mental health problems can affect anyone and can appear as a result of experiences in our personal or working lives, or they can just happen.
- Mental health issues can affect the way people think, feel or behave.

- Stress is the major cause of long term absence (CIPD)

“The adverse reaction people have to excessive pressures or other types of demand placed on them at work.”

Health & Safety Executive

- 95% of employees give their employer an alternative reason for their absence when they are off work due to stress

- The cost to the workforce:
 - In 2015, 18 million days were lost to sickness absence caused by mental health conditions
- Changing perceptions :
 - 85% of employers who employed someone with a mental health problem stated they had no regrets in doing so
 - more than 70% of people with a mental health condition recover and resume normal duties and responsibilities

Mental Health

Stevenson/Farmer Review – Thriving at Work recommendations:

- Produce, implement and communicate a mental health at work plan
- Develop mental health awareness among employees
- Encourage open conversations about mental health and the support available when employees are struggling
- Provide your employees with good working conditions
- Promote effective people management
- Routinely monitor employee mental health and wellbeing

- The UK should aim for **"good work" for all** – a fair balance of **rights and responsibilities** for employer and individual
- We should develop a more **proactive approach** to **workplace health**
- The best way to achieve better work is **responsible corporate governance, good management** and **strong employee relations**

Donelien v Liberata UK – (Ct of App- Feb 2018)

- No duty to make reasonable adjustments if no knowledge of disability
- But... no defence if “ought reasonably to have known....”

Chief Constable of Norfolk v Coffey - (EAT – Jan 2018)

- Discrimination because of perceived disability

United First Partners Research v Carreras - (Ct of App- Mar 18)

- Broad concept of PCP



Mental Health in the workplace

How can you tackle mental health in the workplace?

- Commit to improving mental health at work
- Gather facts
- Educate staff
- Examples of initiatives

Why is it in the spotlight?

- With the emergence of the so called “gig-economy” there appears to have been a growing trend towards casual employment in the labour market.
- Over recent months there has been a flurry of cases concerning status in the gig economy which have hit the headlines, such as Uber and Deliveroo.

Why does it matter to you?



Protection for atypical workers

- An employee working under a contract of service?
- A worker?
- Self-employed working under a contract for services?

Most Protection



Least Protection

- Audit your workforce
- Identify and review atypical workers
 - Interims
 - Contractors
 - Consultants
- Ensure appropriate contracts are in place
- Audit compliance with NMW and holiday pay



Questions?





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