

Statutory Dispute Resolution Procedures

Any employer who struggled to get their head around the statutory grievance and disciplinary procedures will no doubt acknowledge that the procedures are unduly complex.

An employer who fails to follow the correct procedure will find that they have unfairly dismissed the employee and that the compensation awarded to the ex-employee will be increased by up to 50%! This holds true even where an employee is dismissed for theft, fighting, discrimination or any other matter constituting gross misconduct.

It is arguable that the procedures have failed to reduce the amount of litigation and cost of legal proceedings. In fact it would appear that the badly drafted procedures have led to an increase in both.

The Department of Trade and Industry (DTI) have finally recognised these concerns and in March launched a process of consultation with a recommendation to abolish the procedures. Clough & Willis are taking part in the consultation process with specific responses to the latest proposals.

Another potentially important change is the proposed strengthening of the Tribunals' power to award costs.

It is hoped if the recommendations are accepted and become law, that employers will be able to recover their costs in respect of defending weak claims submitted by ex-employees. Although it is arguable such powers already exist they are rarely used; it is hoped this recommendation and further rules will focus the Tribunals minds on the issue of costs.

However, it should be borne in mind that any changes with respect to costs will equally apply to ex-employees. Thus it will be even more critical for employers to seek advice as to the appropriate defence to be submitted and the likelihood of success of any such defence.

Submitting a weak and/or misconceived defence could lead to costs being awarded against an employer **in addition** to awards of compensation. It can be beneficial where employers have a weak defence, to concede liability and fight the action merely to reduce compensation.

If you face a claim speak to us without delay. Don't be tempted by a "do it yourself" approach – it may cost you money.

Agency workers – Are they employees?

There has been some confusion as to whether or not agency workers are employees of the end user (the company at which the agency worker works).

However, given a number of recent decisions, it is hoped this matter is now less confused.

It appeared that the Tribunals and Courts were seeking to define agency workers as employees of the end user thus entitling them to the same employment protection as normal employees.

Obviously, this would give employers cause for concern as companies very rarely consider agency workers as employees and often dispense with their services as they see fit.

Furthermore, it would negate the need for employers to obtain the services of agencies and pay the higher hourly rate normally required.

Recent decisions have deemed agency workers not to be employees confirming the common perception that they are merely workers.

In a recent decision the Employment Appeal Tribunal stated:

“It is not enough to form the view that because the Claimant looked like an employee of the [company], acted like an employee and was treated like an employee, the business reality is that he was an employee and the [Tribunal] must therefore imply contract of employment”

Thus it is not necessary to imply a contract of employment into the relationship between the agency worker and the end user.

Nonetheless, it should be noted that the Courts/Tribunal have not found agency workers can never be employees. Therefore, we strongly recommend that legal advice is sought before taking action against an agency worker.

April a time for change

There have been a number of changes to employment legislation this April:

- ▶ The rate of Statutory Maternity, Paternity, Adoption pay increased on 1 April from £108.85 to £112.75 per week.
- ▶ The amendments to maternity and adoption rights which came into force in October 2006 apply where the expected week of childbirth or placement falls on or after 1 April 2007.

For more information on any of the issues discussed please contact Tim Gray, Partner or Andrew Moore, HR & Employment Law Consultant.

This newsletter contains general information. It is not, and should not be seen as, a substitute for legal advice regarding any particular issue.

- ▶ On 2 April, under the Health Act 2006, smoking in enclosed or substantially enclosed public spaces and workplaces is banned in Wales. The same ban is enforced in Northern Ireland on 30 April and in England on 1 July.
- ▶ From 6 April carers of adults have the right to request flexible working.
- ▶ Businesses with 100 or more employees are required to inform and consult employees on a number of workplace issues. The regulations oblige employers to institute a formal information and consultation procedure.

If you have any queries regarding the above issues please do not hesitate to contact Clough & Willis.

To no a-veil

The teacher, in the highly publicised case, who refused to remove her veil in the classroom has lost her appeal to the Employment Appeal Tribunal (EAT). The EAT held that the Employment Tribunal (ET) were entitled to find that the teacher was not subjected to direct discrimination on the ground of her religion or belief by a requirement to remove her veil whilst teaching.

That is, the ET were entitled to find that any person regardless of their religion or belief would not have been permitted to cover their face whilst teaching.

However, the EAT also agreed with the ET that she had been indirectly discriminated against as a result of the no veil policy but that discrimination was justified.

The EAT said that the aim of wishing to increase the achievements of students was legitimate and not permitting a teachers' face to be covered whilst teaching was a proportionate means of achieving that aim, thus the discrimination was justified.

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