Employment Round-Up

Legal Update
August 2013

Our monthly review of key cases and new law affecting employers

The importance of "subject to contract"

Decision: The High Court has decided that a letter from an employer's solicitors to an employee's solicitors setting out a settlement offer and a subsequent letter from the employee's solicitors accepting that offer amounted to a binding settlement agreement. Since the words "subject to contract" had not been used in the correspondence, there was no scope to make the offer subject to other terms such as confidentiality. A reference to entering into a "suitably worded settlement agreement" in the letter was not sufficient as it did not envisage that there were further terms to be agreed.

Impact: Any correspondence around settlement should have "subject to contract" clearly marked on it. It is also sensible to state that there will be no binding agreement until such time as all parties have signed a binding agreement prepared by the employer.

Newbury v Sun Microsystems

Holiday and sickness

Decision: The Employment Appeal Tribunal has confirmed that the additional 1.6 weeks' statutory holiday given under the Working Time Regulations, which is in excess of the 20 days' holiday provided under the Working Time Directive, does not have to be carried over into the following holiday leave year where an employee is prevented from taking their holiday due to sickness absence.

Impact: This is a helpful decision for employers as it clarifies a point that had previously been unclear and limits to some extent the costs of long term absence for employers. The approach is also in line with that set out in the Government's current consultation paper looking at amendments to the Working Time Regulations. The response to that paper has not yet been issued.

Sood Enterprises Limited v Healy

Large costs award against unrepresented claimant

Decision: The Employment Appeal Tribunal has upheld a decision to make a costs award of £87,000 against an unemployed, unwell, unrepresented claimant. This was on the basis that the claims brought by the claimant were misconceived. The EAT were of the view that the claimant was likely to find work in the future and the County Court could take her means into account when it decided on the timescale for making the payment.

Impact: Whilst costs awards are relatively unusual, this case is a useful reminder that Tribunals can make significant costs orders if claimants bring claims which are very weak. Costs orders, of this size, may well be a real deterrent to individuals.

Vaughan v London Borough of Lewisham and others

Subject access requests – new code published

The Information Commissioners Office (ICO) has published a code of practice to assist employers in handling data subject access requests. It gives some good practical guidance on how to deal with such requests, including circumstances in which personal data is exempt from disclosure. The code also includes a useful "ten simple steps" checklist which is worth a read. The ICO also intends to carry out a "subject access request sweep" of websites later in the year, in a project to look at the information organisations are providing to anyone who may want to make a subject access request. A report will be published in 2014.

Please speak to your usual contact in the Employment Group if you have any questions on any of the issues in this update.

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