Employment Round-Up

December 2013

Our monthly review of key cases and new law affecting employers

Requirement for a Christian employee to work on Sundays was not unlawful discrimination

Decision: The employee, a care assistant at a children's care home, had a deep and sincere belief that Sunday should be a day of rest. It was not appropriate to look at whether or not this religious belief was a core belief of Christianity. It was sufficient to focus on the impact of the employer's policy of Sunday working on those Christians holding this particular belief, even though this may be a comparatively small group of people. On this basis, this policy was potentially discriminatory. However, the policy was justified in the circumstances because the employee had signed a contract requiring her to work on weekends and there was no viable or practicable way of running the care home effectively without requiring her to work on Sundays.

Impact: Ignoring the extremely rare circumstances where an individual holds a genuine particular belief which is shared by no other adherent to that religion, it would seem that the need for a group impact is not likely to bar claims for indirect discrimination on the grounds of religious belief. The issue will almost always turn on whether the employer's interests outweigh the employee's interests. Where individuals are looking to exercise their rights to have some requirement of their job relaxed to enable them to comply with their religious beliefs, there will need to be a balancing act between the detriment to the employer on making that adjustment and the advantage to the employee of being allowed to follow their religious views.

MBA v Mayor and Burgesses of the London Borough of Merton

Application for interim injunction restraining the use of confidential information was unsuccessful

Decision: The High Court refused to grant a former employer's application during ongoing legal proceedings for interim relief to obtain certain documents from a former employee, a witness statement of what he had done with those particular documents, and an injunction restraining him from making any use of such documentation or confidential information belonging to the former employer. The High Court found that the former employer had adopted a much too aggressive approach in attempting to recover certain documentation at an early stage of legal proceedings. The conduct that had been complained of by the former employer was more than 12 months old and many of the allegations against the former employee had not been backed up with evidence. The High Court awarded costs on an indemnity basis against the former employer.

Impact: Deciding whether it is feasible to launch proceedings should be done with a cool head and it is important to consider the evidence rationally. Unduly aggressive letters rarely play well in front of the Court, compared to a measured and objective assessment of matters seeking a sensible outcome.

IFOT Services Limited v Sherry

Employer entitled to rely on "last straw" doctrine to justify immediate dismissal of employee

Decision: The High Court has approved an employer's reliance on the "last straw" doctrine to justify the summary dismissal of an employee. After a heavy drinking session, the employee overslept and missed an important meeting. He was dismissed for gross misconduct and the employer successfully defended his claim for wrongful dismissal. It has been established for a while that an employee can rely on a series of acts by the employer which cumulatively amount to a sufficiently serious breach to entitle him or her to resign because the employer has repudiated the contract of employment (the "last straw" doctrine). The Court accepted that an employer could also rely on the last straw doctrine to justify dismissal of an employee without notice. The employee had shown by his behaviour that he no longer intended to be bound by his contract of employment.

Impact: This decision levels the playing field for employers and employees, and equalises the test for repudiatiory behaviour. It means that some behaviour which might on its own be too insignificant to justify immediate dismissal of an employee can be relied upon if it is the culmination of a course of inappropriate behaviour.

Kearns v Glencore UK Limited

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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