



Our monthly review of key cases and new law affecting employers

A recent decision about providing informal references

Decision: In the recent case of *Mohamed Abdel-Khalek v Qazi Ali*, the Court of Appeal looked at a claim for negligent misstatement in respect of an informal reference provided by an individual to a new employer.

Mr Abdel-Khalek, a surgeon, had applied to work at a new hospital. A surgeon who worked at that hospital heard that Mr Abdel-Khalek would be joining his department and called a contact of his, Mr Ali, who he knew had previously worked with Mr Abdel-Khalek. Mr Ali disclosed that Mr Abdel-Khalek's complications and complaints rate had been higher than expected. Following this discussion, Mr Abdel-Khalek's offer of employment was withdrawn. Mr Abdel-Khalek claimed that his offer was withdrawn due to Mr Ali's negligent misstatement.

The Court of Appeal found that some of the contents of the statements made by Mr Ali were inaccurate and therefore Mr Ali had made misstatements. The Court of Appeal also felt that these statements had been made negligently. However, the overall impression given by Mr Ali was not a misstatement and it was this overall impression which led to the offer being withdrawn, rather than any of the misstatements themselves. Therefore the misstatements did not result in the offer being withdrawn.

Impact: This case illustrates how things could go wrong when informal references are given. In our experience, most employers outside the regulated environment only provide the most basic factual references to avoid the risk of negligent misstatements. However, in this case, an informal request was made as the individuals knew one another and so were willing to give a more candid reference than would normally have been the case. The fact that the reference was given by an individual rather than by the employer does not prevent liability arising for the employer. It is important that individuals understand that if asked to give a personal reference they must make it very clear that they are providing a reference in a personal capacity and not on behalf of their employer. We also recommend reviewing your exit/termination letters and including language which specifies that any reference requests must be sent to a particular individual. This may limit liability for the employer if informal references are then given.

The View From Mayer Brown



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Episode 90

This episode looks at cases involving PHI benefits when an employee reached 60, the withdrawal of childcare vouchers during maternity leave and the discretion to award bonuses.

Episode 89

This episode looks at holiday pay and commission and cases on potential liability for a negligent reference and vicarious liability for an employee's unprovoked assault on a customer.

UK Employment Law: for HR and in-house lawyers



[Join the discussion on LinkedIn](#)

Our LinkedIn group is an excellent source of up-to-date employment law knowledge. We'd like to encourage you to post your own relevant discussions and contribute your own comments on the discussion page.

Gender pay gap reporting

In February, the government published its long awaited response to the consultation paper on implementing the mandatory gender pay gap reporting duty. It also published draft regulations introducing gender pay gap reporting. The key points are as follows:

- The regulations will apply to employers with 250 or more employees working in an individual entity who 'ordinarily' work in the UK under a contract governed by UK law;
- The regulations are expected to come into force on 1 October 2016 but employers will not have to publish their data until April 2018;
- The relevant date for reporting purposes will be 30 April;
- The pay gap data to be reported is: the average and median pay (salary) gap across the workforce, plus the average bonus gap. "Bonus" includes LTIPs and stock incentives;
- Employers will have to publish the numbers of male vs female staff in each pay quartile; and
- The pay gap details will need to be placed on the company website and kept online for three years.

The government has also clarified that its intention is for the gender pay gap reporting requirements to apply to "employees" in the wider sense, as defined by section 83 of the Equality Act 2010. This widens the scope of the draft regulations compared to what was initially understood by many and means that, for example, LLP members and some self-employed contractors are likely to be treated as relevant employees for the purpose of the regulations. This will further increase the data that needs to be gathered by employers in order to comply with the regulations.

Interestingly, the new regulations do not contain any details about enforcement or any sanctions for failing to comply with the reporting obligations or publishing inaccurate or misleading reports. There is also no requirement for the data to be audited or vetted before the employer publishes it.

A second consultation period in relation to the draft regulations closed on 11 March 2016 and the results are expected to be published in summer 2016.

30 seconds with...



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Paralegal

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How long have you been at Mayer Brown?

Just over 6 months

Why did you become a Paralegal?

Since doing some work experience when I was 16, I have wanted to work with and help people in a field which covers a vast range of areas of practice. I like working in the City, being busy and everyday is different!

What is the best thing about your job?

The people (and chocolate Fridays!)

What job would you be doing if you weren't a Paralegal?

Teacher – I love being around children!

What is your favourite box set/book/film?

The Pursuit of Happiness – or anything with Will Smith in.

What is the best holiday/trip you have been on?

Dubai – sun, sea, sand and an outdoor water park!

What super-power would you like to have and why?

To be able to fly – I love views and ideal to avoid traffic!

No obligation to provide childcare vouchers under a salary sacrifice scheme during maternity leave

Decision: HMRC guidance has previously stated that employers should continue to provide childcare vouchers under a salary sacrifice scheme during maternity leave as these are “non cash” benefits and not “remuneration”. An Employment Appeal Tribunal decision (*Peninsula Business Services Ltd v Donaldson*) has suggested that this guidance is incorrect and that childcare vouchers that are provided under a salary sacrifice arrangement are remuneration and therefore do not have to be provided during maternity leave.

The fact that childcare vouchers were provided via salary sacrifice was crucial to the EAT’s decision who said that if an employee was entitled to receive childcare vouchers in addition to their salary (rather than by sacrificing part of their salary), these vouchers would still need to be provided during maternity leave. The EAT confirmed that there were policy reasons behind its decision, stating that having to continue salary sacrifice childcare vouchers during maternity leave would not have been contemplated by Parliament as it imposes a cost on the employer at a time when there is no salary that can be sacrificed under the salary sacrifice arrangement, which produces a windfall benefit for the employee.

Impact: The EAT was cautious in reaching this decision and expressed its conclusions somewhat tentatively. Employers may therefore want to wait to see how further case law develops before changing their practices in relation to childcare vouchers under a salary sacrifice scheme during maternity leave.

Additionally, the Budget announced on 16 March that childcare voucher schemes will be closed to new entrants from April 2018. Existing members at that date will be able to continue to receive childcare vouchers as long as their employer chooses to continue to operate such a scheme.

Events



Our current upcoming events are below, all to be held at our offices. Invites are usually sent out one to two months in advance.

27 April 2016

Seminar: Looking Back/Looking Forward

As usual, we start the year with a review of the key employment law developments from 2015 and look ahead to what we can expect in 2016, enabling you to plan effectively for the coming year.

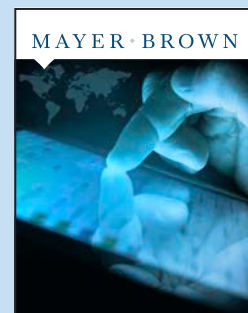
28 September 2016

Breakfast Briefing: Team Moves

30 November 2016

Seminar: Sickness and Disability

Global Tools & Resources



[Click here](#) to view our range of global tools and resources which highlight topical workplace issues across multiple jurisdictions, including our global guides, traffic lights and app.

Employment Legislation Timetable

2016 and Future Developments

12 February 2016	Gender pay gap reporting: Draft regulations published on 12 February 2016. Reporting to include bonuses and extended to cover public sector employers. Employers with 250 or more 'relevant employees' in an individual entity, should report on the 'relevant date', which is 30 April in each year. 'Relevant employees' will have a wide definition to include LLP members, covering individuals ordinarily working in the UK under a contract governed by UK legislation.
15 February 2016	Recruitment agencies: Consultation response published on regulation of recruitment agencies and further restrictions on overseas recruitment.
7 March 2016	Regulatory framework for individuals in financial services: The new senior managers and certification regime was implemented which regulates individuals working in banks, building societies and some investment firms and is intended to align risk and reward and strengthen individual accountability in the financial services sector.
16 March 2016	Budget 2016: Taxation on termination payments: From 2018, termination payments subject to income tax on amounts in excess of £30,000 will be subject to employer national insurance contributions. The £30,000 exemption will remain.
31 March 2016	Modern Slavery Act: Organisations operating in the UK with a turnover of £36m or more, with a financial year ending on or after 31 March 2016, are to complete a transparency statement in respect of that financial year.
1 April 2016	Introduction of the National Living wage: £7.20 per hour for all working people aged 25 and over.
6 April 2016	Introduction of a new flat-rate State Pension: £155.65 a week.
7 September 2016	Whistleblowing in financial institutions: FCA rules to come into force.
October 2016	Gender pay gap reporting: regulations to come into force.
Early 2017	Tax-free childcare scheme: A new scheme will allow working parents where each earns less than £150,000 a year to receive 20% of their yearly childcare costs of up to £2,000 for each child under the age of 12.
2018	Grandparental leave: legislation to be introduced by 2018.
November 2018	Equalisation of state pension age: to age 65 for both sexes by 2018. The age will increase to age 66 by September 2020.

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

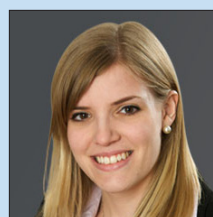


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