



MAY 2009 ... VOL 6 ... PART 1

## EMPLOYMENT TEAM NEWSLETTER

It seems like a long time ago now but Happy Easter. We also hope you enjoyed your first May Bank Holiday weekend and assume, like us, you are looking forward to the next one. We continue to be busy here at Hardwicke Building and hope you enjoy this update of the employment market. In this edition we look at some recently reported cases and topical issues.

If you have any comments or suggestions please contact Marketing Manager Louise Poppelwell by email on the following: [louise.poppelwell@hardwicke.co.uk](mailto:louise.poppelwell@hardwicke.co.uk)

### All change from April

April saw the change of some significant parts of employment law:

- RIP the statutory dismissal and grievance procedures.
- ACAS Code – tribunals will now have power to increase awards by up to 25% if employers fail to follow the new code.
- Flexible working: parents of children aged up to 17 can now request flexible working.
- New ET1 and ET3 forms must be used.

### Recently Reported Cases

#### *Slack & Ors v Cumbria CC*

The Court of Appeal handed down a useful decision on time limits in equal pay cases on 3 April. It has confirmed that the ruling of the ECJ in Preston and the consequent amendment of the 1970 Act made domestic law's treatment of a succession of employment contracts, with or without gaps, compliant with EC law. The time limit for referring the operation of the equality clause in an employment contract to a tribunal is triggered by the termination of the particular contract containing that clause. That is so whether the termination of one contract was followed by another contract, either immediately or after a break. The argument that time should not start to run until the end of the employment relationship had no real prospect of success. The concept of a "stable employment relationship" emerged in a case of a succession of contracts with breaks between them, but the reasoning applies equally to an uninterrupted succession of contracts.

#### *CC Dumfries & Galloway v Adams*

And the EAT handed down a definition of what "normal" means, in the context of normal day to day activities, when considering if a person is disabled under the DDA. The applicant was a police constable who worked night shifts. He suffered with ME which affected his mobility. This in turn affected activities such as walking, stair climbing, driving and undressing. The EAT found that there are enough people who work on nightshifts for working at 2am to 4am to be a normal day-to-day activity within the meaning of section 1. The employer had argued unsuccessfully that it could only be normal if the majority of the working population worked nights.

### Attitude problems

There's nothing to beat good record-keeping when an employer is putting a member of staff through the disciplinary mill. From time to time, one sees cases where an employer has perfectly proper grounds for concern about an employee's conduct, and the employee completely screws up his chances by being aggressive, or recalcitrant - when a more diplomatic response would have served to clear the air. If the employer decides to dismiss, and is taken to tribunal, the employer's notes are crucial in going the real

flavour of what really went on.

## Judicial misconduct

In *R v Cole* (16 March 2009), the Court of Criminal Appeal allowed a defendant's appeal on the basis that he did not receive a fair trial. Amongst other matters complained of, the trial judge had passed his counsel a note headed "5 Ps" with a list of words in bold underneath saying "Prior Planning Prevents Poor Performance"! Of course, employment tribunal chairs don't do that..... or do they? Tell us if you have had any comparable experiences.

## City woes bring legal cheer

According to a report commissioned by Russell Jones & Walker (Times April 7), 20% of City employers failed to follow the consultation process required by law, when making workers redundant.

## Would you trust a lawyer?

The Bar Standards Board's recent poll of 2000 people found that 24% trusted lawyers, while 14% trusted accountants (BSB press release, 31 March). The lawyers' score was made up of 17% saying they trust solicitors, 13% barristers and 11% lawyers generally – how this reduces down to 24% is not immediately obvious! By contrast, only 3% trusted journalists, 2% bankers, and 1% politicians and estate agents.

## Any interesting news?

If you have any suggestions or ideas for our coming editions please contact Louise Poppelwell, Marketing Manager at Hardwicke Building on 020 242 2523 or [louise.poppelwell@hardwicke.co.uk](mailto:louise.poppelwell@hardwicke.co.uk)

This newsletter was edited by Barbara Hewson. For further information on the Hardwicke Employment Team and the services we offer, please visit our website at [www.hardwickebuilding.co.uk](http://www.hardwickebuilding.co.uk)

The members of Hardwicke's Employment Team have specialised skills and experience in all aspects of employment law including matters such as discrimination, unfair dismissal and redundancy, restrictive covenants as well as non-contentious work. We represent both employers and employees via conventional means in addition to direct access.

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Barbara Hewson	1985	Sarah Malik	1999
Peter (PJ) Kirby	1989	David Lawson	2000
Colm Nugent	1992	Denis Edwards	2002
Christopher Camp	1996	Morayo Fagborun-Bennett	2004