

## Employment Newsletter

### DATE

February 2010

### ISSUE

#11

### VOLUME

#1

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.

### Telephone

020 7242 2523

### Email

[enquiries@hardwicke.co.uk](mailto:enquiries@hardwicke.co.uk)

### Practice Director

Amanda Illing

### Senior Practice Manager

Helen Burness

### Practice Manager

Richard Evans

### Assistant Practice Manager

Natasha Devlin

Welcome to 2010 – a bit late I know but February is our inaugural monthly employment newsletter.

Our big news to kick-start the employment team's year is that Hardwicke has appointed Helen Burness as Senior Practice Manager. Helen's remit is to drive forward the strategy of the Commercial Division, playing a key role in the continued development of its employment practice.

Helen was previously at Eversheds LLP for seven years, where she most recently held the role of team leader for the firm's international marketing team. The global nature of her role meant she often led on cross border employment initiatives and pitches and has a sound knowledge of contentious and non-contentious employment matters.

If you would like to chat with Helen about any employment related matter or simply to get to know her then feel free. Otherwise, expect a visit in the not too distant future!

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

### Mostly this month we have been ...

- **Sarah Malik (leader)** and **Simon Hale (junior)** are gearing up for their epic 7 week battle in the East London Tribunal, representing the Claimant against the Respondent (international bank) commencing mid February involving discrimination and whistleblowing
- **David Lewis** commences a multiparty 10 day TUPE (business and service transfer) claim listed in Leicester starting next week, representing 4 of the many Claimants
- **Chris Camp** has been graciously accepting gifts from

# Hardwicke

opponents this month, including a Claimant litigant in person, selected for redundancy mainly because of a low punctuality score, who turned up an hour late for his trial!

- **David Lewis** has also been busy 'across the road' issuing a flurry of restraint of trade injunctions to brighten up the ex-employee's year
- **Chris Camp** is looking forward to taking advantage of Chambers' generous paternity leave policy, which he was not even slightly involved in drafting!
- **Barbara Hewson** has been busy being The Times' lawyer of the week:

<http://business.timesonline.co.uk/tol/business/law/article7022099.ece>

## What's new in 2010

Sadly for many the official unemployment figures are circa £2.5 million. On the upside the figures remain reasonably static so it seems as if the mass redundancies and restructuring programmes are coming to an end. From our experience this appears to be true.

## A drop in the annual compensation limit

This was announced last year but as of 1<sup>st</sup> February 2010 the maximum compensatory award dropped from £66,200 to £65,300. A week's pay (for basic award and redundancy pay purposes) remains the same at £380.

This is the first time that there has been a drop in compensation limits (at least as far as the author recalls).

## Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2010 come into force on 6 April 2010

The Regulations provide that the Tribunal Service may forward a claim, or extracts from it, to a prescribed regulator where the claimant alleges that he or she has suffered a detriment or been dismissed for making a protected disclosure. The likely impact will be that the Employment Tribunal will pass on information about public interest disclosure cases to the relevant regulator.

## Paternity leave and pay extended - April 2010 (for babies due from 3rd April 2011) (planned for April 2010)

Whilst Chris Camp will not be able to take advantage of this, fathers will be granted up to 26 weeks paternity leave if the mother of the child returns to work before the end of the maternity leave period. The father will be allowed to take this

# Hardwicke

additional paternity leave during the second six months of the child's life and may be paid if taken during the mother's statutory maternity pay period.

## **Right to request time off for training is introduced**

Again as of 6 April 2010, the right to request time off to undertake training, modelled on the right to request flexible working, is introduced for employees in organisations with 250 or more employees. Employers will be obliged to consider seriously requests that they receive, but will be able to refuse a request where there is a good business reason for doing so. Employers will not be obliged to pay the salary or training costs to enable a request for time off to train to meet. The Employee Study and Training (Procedural Requirements) Regulations 2010 (SI 2010/155) set out the procedure to be followed when a request for time off to study or train has been made.

## **Did you see that? Recent cases you may have missed...**

### **Age-related notice periods are discriminatory (apparently)**

In *Kucukdeveci v Swedex GmbH & Co* the ECJ has held that a German law providing that employment before the age of 25 is disregarded when calculating service-related notice periods breached the EU Equal Treatment Directive (2000/78). The Court also held that the prohibition on age discrimination in the Directive is a specific application of a general principle of European Union law so that, even in a dispute between two individuals, the national court must ensure that this protection is effective.

### **Agency workers vulnerable to end-user discrimination**

The recent case of *Muschett v HM Prison Service*, highlights a gap in protection from discrimination in employment. The Court of Appeal has held that nothing less than necessity is required to imply a contract for services between an agency worker and an end-user, so as to bring the worker within the wider definition of 'employee' in discrimination legislation.

The effect of this judgment is that agency workers (not employed by somebody else) by and large will not be protected from discrimination by the end-user.

## **And finally.....**

### **Oh why oh why?**

Does anybody share my annoyance with the Tribunal's reluctance/ in many cases an unabashed refusal, to adjourn or re-list hearings to accommodate the parties whether for the

# Hardwicke

availability of the parties or the length of hearing. A recent example: In a case that I am involved in, both the Claimant and the Respondent have written to the Tribunal requesting that a two-day case be re-listed for 4 days. Having considered (allegedly) the request of the parties (incidentally endorsed by both solicitors and both counsel) the Tribunal refused. Can anyone explain the logic for this as it's beyond me? Answers on a postcard..... to the Watford Employment Tribunal.

**This newsletter was edited by David Lewis. For more information on Hardwicke and Employment Law please visit our website [www.hardwicke.co.uk](http://www.hardwicke.co.uk)**

Nigel Jones QC	1976 (1999)
Ken Craig	1975
Stephen Lennard	1976
Barbara Hewson	1985
Peter (PJ) Kirby	1989
Colm Nugent	1992
Christopher Camp	1996
David Lewis	1997
Zeeshan Dhar	1999
Sarah Malik	1999
Morayo Fagborun-Bennett	2004
Simon Hale	2006

## Hardwicke

Hardwicke Building, New Square,  
Lincoln's Inn, London WC2A 3SB  
Telephone 020 7242 2523  
Facsimile 020 7691 1234  
DX LDE 393  
Email [enquires@hardwicke.co.uk](mailto:enquires@hardwicke.co.uk)  
[www.hardwicke.co.uk](http://www.hardwicke.co.uk)