



JUNE 2009 *** VOL 7 *** PART 1

EMPLOYMENT TEAM NEWSLETTER

May saw what might be the beginning of the end of the redundancy rush. Those who predict a “W” recession might see it as merely the eye of the storm. Despite this, the Hardwicke Building Employment Team remains busy advising employers and employees on “economic dismissals”. We discuss below some of the key topics that have been occupying our time and provide an up date on the latest developments.

If you have any suggestions or ideas for our coming editions please contact Louise Poppelwell, Marketing Manager at Hardwicke Building on 020 7242 2523 or by email at louise.poppelwell@hardwicke.co.uk

Mostly this month we have been ...

- PJ Kirby has been drawing on his tort practice advising on potential negligence by a union and firm of solicitors in settling an ET claim.
- Barbara Hewson has been looking at claims under the Data Protection Act against people who provide information to employers.
- David Lewis has been immersed in working out just what isn't (at least arguably) a potential service provision change for “new” TUPE.
- PJ has also been continuing his work advising American lawyers that unfair dismissal law really means that it can be unfair to dismiss someone.

The saga of sick notes

Sick notes - hated by doctors and employers alike. What is the purpose of a sick note? Employers regard them with near contempt, doctors admit to being reluctant to refuse them for fear of damaging the doctor – patient relationship (or sometimes just for fear) and the Courts will not accept them for several DDA purposes.

172 million days were lost to sickness in 2007. 40% of those days to absence of 4 weeks or more. There is currently a plan afoot to replace sick notes with “fit notes” in about a year and a new system that will specify what work the employee can do. For example, as the press release helpfully explains, where an employee has a mobility problem the fit note would state that they could do sedentary work.

This new scheme might put more practical pressure on employers to make reasonable adjustments at work. It might also allow employers, who really want to clamp down on absence by insisting that all employees turn up, insist that someone must do whatever they are passed as fit for.

The new system will be computerised which you could argue is a triumph of hope over experience for public computer projects!

Age Discrimination

The Court of Appeal has confirmed that length of service is not necessarily an unlawful factor to consider in a redundancy selection matrix. The employer had a scheme which considered a range of factors (eg versatility and expertise) including length of service. The Court held that this was indirect discrimination but it was a legitimate aim to seek a stable workforce and reward loyalty and the redundancy scheme was a proportionate means of doing this. Length of service was only one factor (Rolls Royce v. Unite [2009] EWCA Civ 387).

Covenants, directors and damages

It is quite common for a couple of senior staff to leave a company and set up in competition. *Attwood Holdings v. Woodward* [2009] EWHC 1083 (Ch) shows what an employer can do if they get VERY annoyed about this. It started with a search order followed by a springboard injunction. An action for damages was issued arguing that the staff were duty bound (as senior employees and -/or directors) to alert their employer to their own potential competition and, of course, not to take certain preparatory steps prior to resigning. This led to an assessment of damages. So their former boss searched their house, stopped them working for a year and then took a sizeable amount of money off them. Ouch.

Ridiculous and obscure elements of the DGP

Will the DGP fade out or explode in a final blaze of glory? The latest issue is what happens to a constructive dismissal claim where an employee has brought a grievance for only some of the breaches on which he relies in his ET1? The EAT has decided that the Tribunal can "sever" the case and look at the employer's conduct based only on the facts in the grievance (*Parsons v. Burworth Estates* UKEAT 0547/08). It need not strike the claim out but cannot decide it on the basis of what it considers the facts to be.

Any interesting news?

If you would like our members to provide you with in-house CPD accredited seminars on particular employment topics then please do not hesitate to contact Louise Poppelwell by email at louise.poppelwell@hardwicke.co.uk or by phone on 020 7242 2523 for further information.

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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Colm Nugent	1992	Denis Edwards	2002
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