

Employment Law

What You Really Need to Know about Employment Law! Summer 2010

■ Tim Preston, 28th April 2010

■ **Compromise Agreements**

These days when someone is dismissed, made redundant or even resigns, their employer often now offers them extra money, and perhaps an agreed reference, if they sign a 'Compromise Agreement', guaranteeing not to bring any further claim against the employer. These Agreements are only binding if they satisfy certain legal requirements e.g. the employee must have independent legal advice.

■ **Contracts of Employment**

- All staff must be given a contract stating the main terms of their employment within two months of starting work. Proper contracts also help everyone to know where they stand e.g.:
- What use of Internet and telephones is allowed at work, and whether the employer can monitor this.
- To make it harder for employees who leave to join a competitor to poach their old employer's customers, suppliers, key staff or trade secrets.
- It is illegal to stop money from pay, even for theft, unless the contract permits it.

■ **Discrimination**

It is illegal to discriminate because of race, nationality, disability, religion or belief, age, marital status, sex, 'gender reassignment' (i.e. a sex change operation) or sexual orientation e.g. homosexuality.

Employers must be careful about raising these matters at interview. Ask about the individual, not their age, sex etc.: "Can **you** cope with a stressful job?" not "Can someone **as old as you are** cope with a stressful job?"

■ **Discipline and Dismissal**

Employers must now usually follow warning/consultation and appeal procedures before deciding whether to dismiss staff.

In theory, this is so that everyone is treated fairly. Actually, it often means that Tribunal cases are won or lost more on whether the employer followed all the procedures, than on justice or common sense. Consequently, smaller employers, who are not used to the procedures, are especially vulnerable to claims. However, even the biggest companies make mistakes.

Whether you are an employer or an employee, if there is even a possible claim we recommend:

- **If you have a contract or other document that helps your case, it is not safe to leave your only copy at work, where others have access to it.**
- **Employers must give an underperforming employee Disciplinary Warnings early**, so that the employee knows what he has to do to keep his job, while this is still possible. If the employer waits until things have become impossible before taking any disciplinary action, the employer may not be able to dismiss the employee legally.
- **Many employers' ideas of warnings and dismissal procedures will not satisfy a Tribunal. If you are an employer, unless you really know what you are doing, take legal advice early.**
- **Put it in writing** – keeping a diary of incidents, or writing to the other party to confirm what was agreed, may be vital evidence later.

E.g. An employee leaves work abruptly after a sharp exchange of words with his boss. This often leads to a dispute as to whether the employee was sacked, resigned, or was just sent home temporarily to calm down. Whether you are an employer or an employee, if you are in this situation, *always* send a letter or email to the other party that day to record what you believe has happened. Unless they promptly reply in writing to deny it, your version of will then be the one that is on record, and therefore the one most likely to be believed.

- If an employer's conduct drives an employee to resign, the employee may be able to claim compensation for **Constructive Dismissal**; e.g. if the employer seriously undermines the employee's terms of employment, or treats him in a degrading way.

▪ **Holidays**

There is no legal right for staff to take Christmas Day or any other Public Holiday as a day off, unless their employer gives them that right in their contracts of employment. If staff *are* allowed to take Public Holidays as paid leave, then this counts towards their minimum paid holiday entitlement as below.

Minimum paid holiday entitlement: now 5.6 times the employee's normal working week.

That seems an odd figure, but for someone working a 5 day week, it works out at exactly 28 days paid holiday each year. As there are 8 Public Holidays in Britain, the law is therefore satisfied if the employee is allowed to take 20 days a year plus the Public Holidays.

Part-time example: Zoe works 2 ½ days a week. Her minimum paid holiday entitlement will be 5.6 times that i.e. 2 ½ days x 5.6 = 14 days paid holiday per year. It does not matter whether some of the 14 days are Public Holidays or not, as long as Zoe has at least 14 days paid holidays in the course of the year.

If the calculation produces a fraction, always round up to the next day or half day. E.g. if it comes to '7.1 days', round this up to 7 ½ days paid holiday.

▪ **Hours of Work**

A break (e.g. lunch or tea break) of at least 20 minutes **every 6 hours** (30 mins every 4½ hours if aged under 18).

Maximum compulsory working week: 48 hours (40 hours if aged under 18), averaged over 3 months.

Employees may work longer hours, but only if this is genuinely voluntary.

▪ **Maternity Leave**

Expectant mothers, if in employment, may take **52 weeks maternity leave**. The first **39 weeks** of this (approx. nine months) are on **Statutory Maternity Pay**. The remainder is unpaid. See:

www.hmrc.gov.uk/employers/employee_pregnant.htm

She may keep most benefits of her employment (except salary and salary related pension contributions) throughout her maternity leave e.g. holiday pay, and health insurance, company car (and probably also car allowance) if she has

these. Inevitably, some mothers with no wish to return to work hand in their notice timed to expire on the last day of their maternity leave, so as to keep these benefits until then.

Fathers may currently take just 2 weeks leave on **Statutory Paternity Pay** (similar to Statutory Maternity Pay), if taken within 8 weeks of the child's birth.

The maternity/ paternity leave rules tend to change every few years, usually to extend employees' rights. There is a proposal that from April 2011 mothers be able to transfer up to half their maternity leave entitlement to the father.

▪ **Minimum Wage**

Aged 22 or over: **£5.80** per hour (from 1 Oct 2010 **£5.93**)*

Aged 18-21: **£4.83** per hour (from 1 Oct 2010 **£4.92**)

Aged 16-17: **£3.57** per hour (from 1 Oct 2010 **£3.64**)

*from 1 Oct 2010, the top rate applies from age 21

Agricultural workers: see Agricultural Wages Order www.defra.gov.uk/foodfarm/farmmanage/working/agw/ages/awb

Apprentices: Not all qualify for the Minimum Wage – check with government Helpline **0845 6000 678**

Earnings through 'Tips' from customers do not count towards the minimum wage, nor do non-monetary benefits, except for some free accommodation.

▪ **Notice to Terminate Employment**

Employees are entitled to **one week's notice of dismissal for each completed year of service, (minimum, one week; maximum, twelve weeks)**. Contracts of Employment may entitle employees to longer notice than this, but never shorter.

Employees only have to give a week's notice of resignation, unless their contracts require them to give longer

▪ **Passports of New Employees**

By law, employers **must photocopy** the passports of all **new staff** before they begin work. (Some other documents are acceptable –try Home Office Employers' Help Line **0845 010 6677**.) This is really to prevent illegal immigrants working in the UK, but to avoid discrimination claims the safe policy is to check every new employee's passport.

▪ **Redundancy**

Even the best worker may be made redundant, if their job is no longer needed. However, normally the employer must first consult them, consider alternatives, and allow a right of appeal. Even if

consultation seems pointless, the employer should not skip this, or the employee will win an unfair dismissal claim. (Exceptions: if the employee has a short period of service; or the employer and employee sign a **Compromise Agreement** see above)

■ **References**

Usually, **employers do not have to give references**. If they choose to do so, the employee can obtain a copy of the reference under the Data Protection Act.

■ **Retirement**

In most occupations it is now illegal to enforce a retiring age lower than 65. Even at 65, employees may only now be compelled to retire if their employer gives them at least 6 months warning, and informs them of their right to request to be allowed to continue working. Employers may refuse such requests, but must follow a procedure and consider requests individually.

■ **Sick Leave**

Many employers choose to give rights to sick pay in staff contracts. If not, employees have no right to be paid anything for the first three days of absence. After that, **Statutory Sick Pay** applies. See Revenue website:

www.hmrc.gov.uk/employers/employee_sick.htm

The law about dismissing employees on prolonged or recurring sick leave is too complicated to summarise here. Employers should take legal advice, early, in all cases.

■ **Time-Off for Family Reasons**

All staff are entitled to reasonable unpaid time off to attend to **family emergencies**, and **family funerals**.

Both **mothers and fathers** with at least one year's service can take up to **4 weeks unpaid** leave every year to **look after children aged under 5**. (See also Maternity Leave.)

■ **'TUPE' Regulations: Sale/Transfer of a Business**

Under the so called 'TUPE' Regulations, employees must be consulted before the sale of the business, or of their part of the business. Their existing rights and contracts continue after the sale. This also now applies to staff employed to serve a single customer, if that customer changes suppliers. The new supplier must normally offer to employ those staff on their existing terms.

■ **Written Reasons**

If you are an employee, you are entitled to written reasons if your employer:

- Dismisses you, if you have at least 1 year's service.
- Treats you differently from other staff in a way that could be race, sex or other discrimination.
- Does not let you alter your hours of work to fit in with your childcare or similar commitments.

If you are an employer, and one of your staff requests written reasons as above, be careful! They may well have consulted a lawyer or Citizens Advice Bureau, and hope that your naive reply will set you up for a tribunal claim!

This Update will help you know when you need legal advice, but will not replace that advice. We accept no liability to those who act without consulting us further.

Contact Tim Preston at Lightfoots LLP for realistic advice, including about representation in a Tribunal or how to present your own case; or better still, especially if you are an employer about avoiding Tribunal cases in the first place!

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References:

Maternity Leave:

www.hmrc.gov.uk/employers/employee_pregnant.htm

Agricultural Workers:

www.defra.gov.uk/foodfarm/farmmanage/working/agwages/awb

Sick Leave:

www.hmrc.gov.uk/employers/employee_sick.htm

