

## Network: 28 January 2008

### New Compensation Limits

The annual increases in compensation limits have been announced for 2008-9. The changes come into effect from 1 February 2008. The new figures are as follows:-

- The weekly pay cap, which is used for the calculation of Statutory Redundancy Pay and the basic award for unfair dismissal will increase from £310 to **£330**.
- The maximum compensatory award for unfair dismissal will increase from £60,600 to **£63,000**.

The new rates will only apply where the action (i.e. in the case of unfair dismissal, the date of dismissal) that has led to the award of compensation or payment occurs on or after 1 February 2008.

### Successful Sex Discrimination claim for Employee labelled "useless" after becoming pregnant

*(Louise Manning v Safetell)*

A senior sales executive has won her sex discrimination claim after being labelled "useless" following her announcement that she was pregnant.

Louise Manning received a memo from Nick Medlam the Managing Director of Safetell stating that she "would never be the same again" and that he "felt betrayed". Ms Manning also received further derogatory comments, had training courses cancelled and was demoted twice whilst on maternity leave from her position.

The Tribunal panel revealed in its judgment that the comments were "clearly...derogatory and discriminatory" and stated that "It is not often, these days that the tribunal is faced with such a blatant response to notification of pregnancy."

The Tribunal panel will meet again in February to decide the amount of compensation payable to Ms Manning and will further consider her separate claim for constructive dismissal. It is believed that the compensation payable could be as much as £200,000.

## **Disability Discrimination: Likelihood of Recurrence should not be taken into account**

*(Richmond Adult Community College v McDougall [2008] EWCA Civ 4)*

The Court of Appeal, in *McDougall*, has clarified the position as to whether somebody is disabled, when their symptoms have ceased but are 'likely to recur'. The Court of Appeal decided that it cannot take into account a relapse that occurs after the date of the alleged act of discrimination.

The case concerned the withdrawal of a job offer from the Claimant when she failed to obtain clearance from occupational health. The Claimant suffered from a persistent delusional disorder. Whilst the condition was lifelong, the Claimant had not suffered an episode for three years. However, before the Tribunal hearing, the Claimant suffered a relapse and was committed under the Mental Health Act.

The EAT, in overturning the Tribunal's decision, decided that the Employment Tribunal ought to have regard not just to the evidence as at the relevant time, but also to subsequent events that had occurred by the time of the hearing. The Court of Appeal disagreed. The Court decided that the Disability Discrimination Act 1995 was unambiguous on this point. This requires the courts to focus exclusively on evidence relating to the then likelihood of recurrence and it provides no support for the suggestion that it is legitimate to answer the inquiry by taking subsequent events into account. The evidence relating to the relevant time, either will or will not prove the likelihood of recurrence.

The Court of Appeal agreed with the EAT that Employment Tribunals have to take a practical approach to the assessment of disability, but that does not entitle them to take into account irrelevant evidence. Also the suggestion that they will be unable to ignore the evidence of what has happened since the relevant time is unfounded.

So far as the calculation of damages is concerned however, courts do have regard to events subsequently occurring which throw light on the realities of the assessment exercise. The point of the principle is to ensure that awards of compensation are so far as practicable, assessed in light of known realities with the objective of avoiding over or under compensation, but this principle has no application in relation to liability.

**If you have any questions about these or other employment issues please call Heather Cowley on 01582 731161.**