

Network: 8 October 2007

Employment Tribunal Statistics - 15% rise in the number of cases brought

The Tribunals Service has released figures covering the period 1st April 2006 to 31st March 2007, which show a 15% increase in tribunal cases from 115,039 to 132,577. Nearly all classifications of claim displayed an upward trend, with equal pay claims showing the biggest increase, up 155% from 17,268 to 44,013. Sex discrimination claims also rose sharply, up 100% from 14,250 to 28,153.

Another point worth noting is the number of age discrimination claims brought since the implementation of the Employment Equality (Age) Regulations 2006 on 1st October 2006. 972 claims were brought in the first six months and a logical and conservative estimate should see the amount of claims at least double in the next year.

The Chief Operating Officer of the Tribunals Service which administers the Employment Tribunals, said the significant reason for the increase in tribunal cases was the increase in equal pay claims, for which 2 dedicated teams have been set up to process equal pay cases from NHS staff. However it was also stated that waiting times for cases have been reduced.

New Legislation

A number of changes to employment law came into force on 1 October, most notably the first stage of the increase in the statutory minimum holiday entitlement. As from 1 October workers will be entitled to 4.8 weeks paid annual leave each year which equates to 24 days for someone working full time. The entitlement will rise again to 5.6 weeks on 1 April 2009.

Other changes include the annual increase in the national minimum wage, the extension of the right to request flexible working to private adopters and foster carers and also the launch of the Commission for Equality and Human Rights.

Age Discrimination Legislation subject to strict interpretation

(Holmes v Active Sensors Ltd (ET))

An employee who was retired at the age of 65 lost his age discrimination claim, because the employer had followed the correct procedure. The employee also lost his claim for unfair dismissal as the tribunal decided that his request to continue working had failed to comply with the relevant statutory requirements contained in the Employment Equality (Age) Regulations 2006 ("the Regulations").

The Employment Tribunal found in interpreting the legislation, that an employee must expressly state in the request to continue working after the intended date of retirement, that the request was being made under Paragraph 5(3) of the Regulations. However the employer is not required to make any express reference to the Regulations in its notice of the intended retirement date.

This is one of the first tribunal cases we have seen on the statutory retirement procedure. It shows the tribunal taking a strict and formulaic approach to the notice requirements for the right to request to carry on working. In reaching its conclusion the tribunal expressed surprise that the Regulations require employees to refer to them specifically, as similarly stringent requirements are not placed on any notices served by the employer.

Age discrimination will be considered along with other areas of discrimination at our Annual Employment Law seminar on Thursday 1 November, to book your place click [here](#).

TUPE and the new service provision rules *(Hunt v Storm Communications Ltd and Ors (ET))*

This case confirmed that a "Service Provision Change" ("SPC") transfer occurred under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE 2006"), when the client company changed its provider of specialist public relations services. The Claimant whose contract did not state that she would be working for any one client in particular, spent around 70% of her time working on the client's account.

For many years it has been difficult to conclude whether a SPC might amount to a "relevant transfer" for TUPE purposes, mainly because European case law concerning the application of the EC Acquired Rights Directive, which TUPE implements in the UK, has been both complicated and inconsistent on this issue. As a result of this confusion the Government made specific provision in TUPE 2006 for SPCs.

In order for the SPC to be covered by the Regulations, there must be an organised grouping of employees situated in Great Britain, which has as its principal purpose, the carrying out of the activities concerned on behalf of the client, immediately before the SPC. As a result it is anticipated that the majority of SPCs involved in outsourcing, in sourcing and re-tendering exercises will be covered by the Regulations.

In this case the Claimant argued that her "principal purpose" was carrying out specialist public relations services for the client company as this accounted for 70% of her work. Also, despite being the only individual employee to work for this client, she was held to constitute an organised grouping within the meaning of the Regulations.

This decision will be of concern to both purchasers and providers of professional services. It means that an individual or team may transfer from one company to another, regardless of whether either company wants this to happen and regardless of the fact that the client might have made the change because he was dissatisfied with the original providers.

The Tribunal decision has been appealed so it will be interesting to see what the Employment Appeal Tribunal has to say on the matter.

Correction...

In the recent edition of Network, dated 19 September 2007, it stated that the statutory holiday entitlement would increase from 24 days to 28 days with effect from 1 April 2008.

It should have stated from 1 April 2009. Many thanks to Simon Dawes & Jo Crumpton of odm Ltd for spotting the error and please accept our apologies for any confusion caused.

If you would like further advice on any of these topics, please contact [Heather Cowley](#) on 01582 731161.