RadcliffesLeBrasseur

Employment Update

Solicitors

September 2007

Are you ready for the changes in annual leave entitlement

Under the Working Time Regulations 1998, the current entitlement for employees or workers is to be paid four weeks' annual leave (20 days based on a 5 day working week). There is no statutory entitlement to be paid leave on bank holidays or public holidays, of which there are 8 and they can be included in the 20 days annual leave. Therefore, some employees in effect only receive 12 days' holiday under the current regulations.

From 1 October 2007, this is all set to change when the entitlement will increase from 4 weeks to 4.8 weeks (24 days for a worker that works a five-day week), inclusive of bank holidays and public holidays. A further increase will take place from 1 April 2009 which entitles employees and workers to 5.6 weeks (28 days for a worker that works 5 days) annual leave, inclusive of bank holidays and public holidays.

The changes provide that the 4 weeks must be taken in the leave year, but if the employer and employee agree, any leave over and above 4 weeks can be carried over to the following leave year. Furthermore, if both worker and employer agree, whilst 4 leave weeks must be taken in the relevant leave year, payment in lieu can be paid for the remainder but only until 1 April 2009.

If these changes affect your organisation, you should start thinking about notifying employees or workers of the change in the holiday entitlement, which can be done by way of a letter setting out the changes.

The statutory entitlement for a worker or employee will depend upon when their leave year begins.

So for example:

a worker or employee whose leave year commences on 1 January will have holiday entitlement as follows:

In the leave year – January to December

4.2 weeks	January 2007 – December 2007
4.8 weeks	January 2008 – December 2008
5.4 weeks	January 2009 – December 2009
5.6 weeks	January 2010 – December 2010

a worker or employee whose leave year commences on 1 April will have holiday entitlement as follows:

In the leave year – April to March

4.4 weeks	April 2007 – March 2008
4.8 weeks	April 2008 – March 2009
5.6 weeks	April 2009 – March 2010

STOP PRESS

From Monday 1st October 2007, the National Minimum Wage rates increase as follows:

Workers aged 22 and over	£5.52
Rate for 18-21 year olds	£4.60
Rate for 16 –17 year olds	£3.40

When settlement discussions lead to a further claim of discrimination

New guidance from the Lords on employers and the victimisation provisions

A recent House of Lords case has highlighted that employers could potentially open themselves up to a further discrimination claim when attempting to settle an employee's pre-existing discrimination claim. Anna Jackson considers what employers should do to protect their position in litigation and avoid laying themselves open to claims of victimisation.

St Helen's Borough Council was in receipt of 510 equal pay claims brought by dinner ladies of which all but 39 were settled. In an attempt to resolve the matter without the need to attend a tribunal, the Council wrote to the dinner ladies.

The first of the two letters was sent to all catering staff and spelt out the severe financial impact that the costs of successful equal pay claims would have on all the staff and service users. The second letter was sent solely to the 39 women who were pursuing their claims and urged them to accept the Council's offer of settlement, repeating the warning of severe financial pressure.

The women subsequently claimed that they had been victimised pursuant to Section 4 of the Sex Discrimination Act 1975. They claimed that the letters were intimidating, distressing and that they had been subjected to 'odium' from their colleagues; compared with the treatment of the dinner ladies who had settled their claims, this therefore amounted to less favourable and detrimental treatment. The Council, on the other hand, relied on past case law which stated that employers were entitled to protect their position and said that the letters had represented an honest and reasonable attempt to settle the claims to that end.

The Court of Appeal was persuaded by the Council's arguments, but on appeal the House of Lords considered that the Council had gone too far. The Lords recognised that an employer might face 'hard choices' in dealing with the financial aftermath of its employees' claims and noted that an employer did have a general settlements. However, this needed to be balanced carefully with the original intention behind the victimisation provisions: that those who are bringing a discrimination claim should not be penalised for so doing. In this case, the House of Lords held that the sending of the letters was not an honest and reasonable attempt by the Council to settle the claim but an attempt to coerce the women into giving up their claims, essentially 'blaming the victims'.

So how can employers who wish to protect their position and attempt settlement in discrimination claims avoid falling foul of the victimisation provisions?

- The employer should be aware of the employee's right not to be victimised and should put himself in the employee's position before taking any action.
- No action should be taken by the employer that might make a reasonable employee feel that he is being unduly pressurised to halt proceedings.
- Whilst an employer can take steps to protect its position during the course of litigation, including broadly identifying the possible consequences claims may have on the employer's business as a whole and negotiating settlements, this is best achieved through communication with the employee's representative.
- In the absence of representatives care must be taken in any settlement negotiations and they must not be overly aggressive or threatening.

Please contact **sejal.raja@rlb-law.com** should you have any queries regarding any of the issues raised in this article.

Ask REG

For those who have not been introduced to REG

Who is REG? REG (otherwise known as RadcliffesLeBrasseur Employment Group) is a friendly, approachable and yet knowledgeable character and appears as a (fairly) regular feature in our Update to answer those employment law questions you were too afraid to ask.

REG invites you to email your questions to reg@rlb-law.com. You can also telephone or email any of us and we will pass your questions on. Look out for REG's answers to your questions in forthcoming issues of the Employment Update.

Dear Reg,

I don't think my employee has a visa to work in this country and it's therefore against the law for me to employ her. In a case such as this I can dismiss her summarily without jumping through the procedural hoops, can't I?

You have good reason to be concerned, as it is indeed breaking the law to employ someone who does not have the legal right to work in this country. As an employer, one of the potentially fair reasons for dismissing an employee is that their employment is illegal in some respect (s 98 Employment Rights Act 1996) and you are right that an employer in this situation is not obliged to follow the usual dismissal procedure (Dispute Resolution Regulations Reg 4(1)(f)). However, we would urge you to think very carefully before making the decision to dismiss any employee without having followed the dismissal procedure. Remember that, if your employee brings an unfair dismissal claim against you and it turns out that actually she does have the right to work in the UK, the dismissal procedure should have been followed and your failure to follow it means that the dismissal will be found to have been automatically unfair. It is better to have erred on the side of caution and done more than may be strictly necessary than to face the possible financial consequences later!

Dear Reg,

Is it right that I do not have to follow a procedure if I wish to terminate someone's employment who has less than one year's service?

The right to claim unfair dismissal only arises once an employee has accrued one year's service and therefore, strictly speaking, you do not have to follow the procedure. However, you should be aware that, if the employee feels that the reason could be discrimination on the grounds of their sex, race, age, disability, religion or belief or sexual orientation, then they do not have to have the qualifying service to bring a claim. In addition, claims under the whistle-blowing legislation could be brought without the requisite service. My advice is to err on the side of caution and follow the statutory procedure.

WORKSHOP/SEMINAR NEWS

Dates for the diary:

19 & 26 September:	Managing Stress in the Workplace
1 November:	Annual Seminar

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Meet the Team

Michael Farrelly has recently joined RadcliffesLeBrasseur Employment Team as a Partner. Michael was formally a Partner at the firm Constant & Constant

Anna Jackson spoke to Michael to find out more about him.

How are you finding life at RLB?

I have really enjoyed joining RLB. In particular it has been fantastic to be part of a team again, particularly such a cohesive and accomplished one. Having been the only employment lawyer at my last firm, the opportunity to discuss matters with colleagues is very reassuring and allows me to explore more unusual solutions to client's problems. The different backgrounds within the team adds up to a vast pool of knowledge that we can all tap into.

Why did you choose law as a profession and why did you specialise in employment law?

I think Law chose me. Having just graduated in Geography and following a bit of travelling, I was unsure where my career was heading until I was, by chance, placed by an employment agency as a clerk/paralegal at several leading London firms. Collyer-Bristow gave me my first permanent role and then I was hooked. Employment Law always appealed to me as an area of Law that deals with tangible and important issues, that gives great satisfaction and is relatively "fast-paced". I can make a real difference to my clients' lives or businesses. With the constant change in statute and case law, it is never a dull area of practice to be in.

Charlotte Stern joined RadcliffesLeBrasseur as an Assistant Solicitor. Charlotte was previously at Lewis Silkin.

Anna Jackson interviews Charlotte to find out more about her.

How are you finding life at RLB?

Good! There's a variety of interesting work, nice people and usually far too many cakes and biscuits around in the office than is good for me.

Why did you choose law as a profession and why did you specialise in employment law?

I studied Law at university and enjoyed it, so it seemed sensible to pursue it as a career. Employment Law has the best elements of legal practice: you get to advise, go to court, meet lots of different people and deal with a very interesting and dynamic area of law.

If you require any further information regarding the issues mentioned in this bulletin please contact Michael Elks or Sejal Raja.

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