

RadcliffesLeBrosseur



Employment Law News 3

April 2010

In this month's Employment Law News, we focus on two changes coming into force on 6 April 2010.

1. The standard rates of statutory maternity pay, statutory paternity pay and statutory adoption pay will increase to £124.88 per week, or 90% if a person's average weekly earnings are less than £124.88.

2. As reported in our previous employment news, the new Statement of Fitness to Work or "Fitnote" is coming into force on 6 April 2010. This is intended to focus minds on what can be done to assist an employee to return to work after a period of ill-health absence. The Government has stated that GPs will now only be able to certify that an employee "may be fit to work" rather than "fit to work" to make it clear that employers still need to carry out a risk assessment on the employee's return to work. The "Fitnote" will list the common types of changes employers can introduce to assist a return to work, for example a phased return to work, amended duties, altered hours, and work place adaptations.

If you would like assistance in ensuring that your policy is up-to-date to comply with this new legislation, please do not hesitate to contact us.

CASE ROUNDUP

Our roundup this month includes two interesting cases on the Disability Discrimination Act and a salutary lesson for employers seeking to rely on a contractual right to terminate an employee's employment immediately subject to payment in lieu of notice.

Department for Work and Pensions v Alam

Mr A suffered from depression, the symptoms of which were loss of concentration, a tendency to lose his temper and severe headaches. The employer accepted that he was disabled within the meaning of the DDA.

He was disciplined for leaving work early despite being refused permission by his manager to do so (his manager not being aware of his medical condition). A warning was imposed to last for twelve months. The question arose as to whether the employer was exempted under s.4A(3) of the DDA from a duty to make reasonable adjustments.

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The EAT held that the exemption did not apply if the employer knew or ought to have known both that the employee was disabled and that the disability put him at a substantial disadvantage compared to non-disabled employees in relation to the provision or criteria. This was identified in this case as the need to seek his manager's permission to leave work early or be subject to a written warning. The EAT concluded that the employer ought to have known of the employee's disability but it could not be said that the employer ought to have known that the employee was put at a substantial disadvantage because his condition made it difficult for him to ask for permission from his manager when required. The claim against the employer for failure to make reasonable adjustments was therefore dismissed.

The case clarifies and simplifies the test for deciding whether the employer is exempt from his duty to make reasonable adjustments.

Patel v Oldham Metropolitan Borough Council

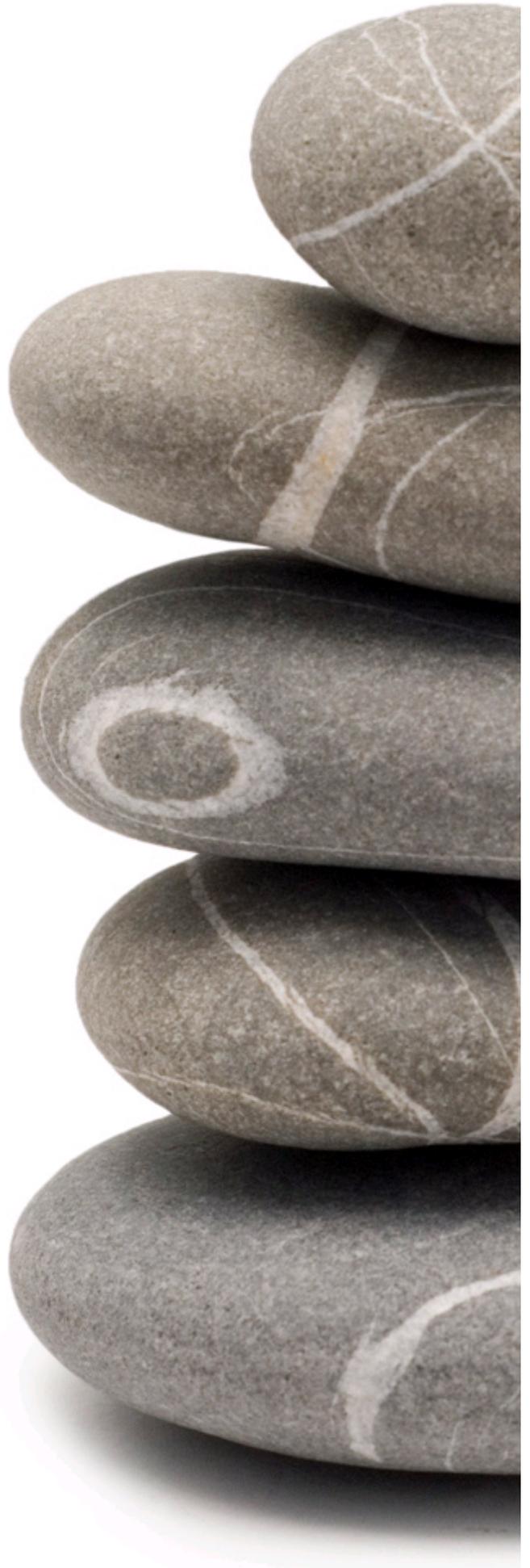
Mrs P suffered from mild myelitis for most of 2005. By January 2006 she had developed a secondary myofascial pain syndrome. Both conditions affected her left groin and upper leg. By July 2006 she was working full time again as a primary school teacher but suffered an injury whilst restraining a pupil at a swimming lesson a couple of months later. She suffered increased pain in her left groin and leg and pains in other areas as well. After a further four and a half months absence from work she was dismissed on the grounds of capability.

Mrs P made a claim under the DDA. The question was whether the two periods of sickness could be taken together for the purposes of considering whether the adverse effect was suffered for at least the requisite period of twelve months. The evidence was that neither of the two conditions lasted or was likely to last for that long. The EAT held that the ET should have considered whether the secondary myofascial pain syndrome had developed from the myelitis. If so, Mrs P was disabled within the meaning of the DDA. The case was remitted back to the ET.

Geys v Société Generale

Mr G was employed by the Bank on a contract providing for three months notice and a pay in lieu of notice clause which set out the amount of money which the Bank would have to pay in lieu of notice. This took into account not only his actual salary but certain other benefits as well.

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On 27 November 2008 Mr G was called in by his manager, and told that his employment was being terminated with immediate effect. He was escorted from the premises never to return. No payment in lieu was made immediately and Mr G was in due course sent a termination agreement which he did not sign. Mr G, through his solicitors, reserved all his rights. On 18 December 2008 a payment was made by the Bank to Mr G without any explanation as to what it was or how it was calculated. Mr G affirmed the contract on 2 January 2009 before any information was given as to the basis of calculation. If he was in fact still employed on 31 December he stood to gain substantially not only in terms of salary but other benefits as well. The Court held that the Bank had not terminated on the basis of its right to make a payment in lieu of notice because it had not stated this was the basis of termination and had not made an immediate payment in lieu of notice as required by the relevant clause in the contract. After the payment in lieu of notice was made the employee did not by his conduct accept that the contract was at an end and he was therefore entitled to affirm it as he did at the beginning of January. The contract did not therefore terminate until 4 January when the employer made clear that it was terminating in reliance on the pay in lieu of notice clause.

This case highlights the need for employers to make clear that they are relying on a pay in lieu of notice clause to terminate with immediate effect and to comply strictly with the terms of the employment contract when doing so. If they do not they may be terminating in breach of contract., thus losing the right to enforce any post-termination restrictions.

If you require any advice in relation to the contents of the Employment Law news then please contact

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Sejal has considerable experience in both contentious and non-contentious employment matters, including drafting and negotiating employment contracts, advising on disciplinary procedures, dismissals.

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Disclaimer

This briefing is for guidance purposes only. RadcliffesLeBrasseur accepts no responsibility or liability whatsoever for any action taken or not taken in relation to this note and recommends that appropriate legal advice be taken having regard to a clients own particular circumstances.

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