

RadcliffesLeBrosseur



Employment Law News 1

January 2010

Welcome to RadcliffesLeBrosseur's first Employment Law News, a monthly round up of employment law news specifically tailored to HR managers and others involved in managing staff. Our Employment Law News is in addition to our employment alerts, employment briefings and case of the month.

Case round-up

Religion and Religious beliefs: McFarlane v Relate Avon Ltd.

Mr McFarlane refused to undertake the counselling of same sex couples where sexual issues were involved. The reason why he refused to do this was that same sex sexual activity was contrary to his religious beliefs. He was dismissed and brought a claim alleging he had been discriminated against because of his religion or belief. The Employment Appeal Tribunal ("EAT") dismissed Mr McFarlane's claim. The EAT recognised the importance of the employer in providing non-discriminatory services and held that another employee who refused to counsel same sex couples for non-religious reasons would have been treated in the same way.

The case highlights once again the conflict that may exist in the workplace when religious beliefs conflict with individual's duties.

Right to legal representation at disciplinary hearings: G v X School and Y City Council

The Court of Appeal has affirmed the High Court judgment given last year that in certain situations an employee may have the right to legal representation during an internal disciplinary hearing. The employee, a teaching assistant, was dismissed following a disciplinary hearing in which he had been accused of kissing a 15 year old boy and sending him text messages. The school refused his request that he be allowed to be legally represented at the disciplinary and appeal hearings. After the disciplinary process had been concluded the school notified the Secretary of State for Education of the dismissal who then had to determine if the employee should be stopped or limited in his work with children. The Court of Appeal held that in this case the employee should have been given the right to be legally represented at the disciplinary and appeal hearing because the disciplinary process had a substantial influence on his ability to practise his profession because of the referral to the Secretary of State.



What does this mean for employers? In most cases the statutory right to be accompanied by a colleague or TU representative will be sufficient. However, if following the outcome of a disciplinary process a referral is made to an external body, which may affect the employee's right to practise his profession then employers' should carefully consider whether the statutory right to be accompanied should be extended to allow legal representation.

Transfer of Undertakings (Protection of Employment) Regulations: *Unison v Somerset County Council (1) Taunton Deane Borough Council (2) South West One Ltd (3)*

Employers have a duty to inform and consult the representatives of "affected employees" regarding a transfer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations. The EAT held that "affected employees" includes those individuals who will or may be transferred and also those who have internal job applications pending at the time of the transfer. It does not include others in the workforce who might apply in the future for a vacancy in the transferred part of the business.

This case highlights that the obligation to inform and consult is not restricted to those actually in post at the time so you should ensure you consider those whose internal job applications are pending.



Risk Assessments: *O'Neill v Buckinghamshire County Council*

This case confirms that there is no general obligation to carry out a risk assessment for a pregnant worker, but an employer will be under such a duty if:

(a) The employee notifies the employer in writing that she is pregnant;

(b) The work is of a kind which could involve a risk of harm or danger to the health and safety of the pregnant worker and her baby;

(c) The risk arises from either processes, working conditions or physical, chemical or biological agents in the workplace.

There does not have to be a meeting with the worker before the obligation is satisfied, but the employer does have to provide her with comprehensive and relevant information on the identified risks to her health and safety.

What to expect in 2010

Equality Bill: A proposed Act of Parliament and part of the current Government's legislative programme. Its purpose is to harmonise discrimination law, strengthen it and arguably to simplify it. Whether it will make it onto the statute books is still a moot point. If it does, it will be the most important piece of legislation due to come into force in this year.

Decrease of maximum unfair dismissal compensatory award: The maximum amount that an Employment Tribunal can award in compensation for unfair dismissal is set to fall for what is believed to be the first time. The maximum award will fall from £66,200 to £65,300 to reflect a fall of 1.4% in the retail price index (RPI). The new limits will be applicable where the event that gives rise to the award or payment occurs on or after 1 February 2010. The change will not affect the maximum amount of a "week's pay" of £380 for unfair dismissal and redundancy because this was increased in October 2009.

Sick notes to be replaced with fit notes: New regulations are expected in April to introduce the new "fit notes". The Government's intention is for the new forms to hopefully provide more information focussing on what an individual can do rather than what they cannot do. The forms will give GPs the opportunity to state if the patient is fit for work, or able to undertake some work or not undertake any work at all and to comment on whether adjustments, e.g reduction in working hours, work loads would be beneficial.

Right to request time off for training: Employers with 250 or more employees will, from 6 April 2010, be obliged to consider requests for unpaid time off work to undertake study or training that will improve an individual's effectiveness at work and the performance of their employer's business. Employers will be able to refuse a request where there is a good business reason for doing so.

Paternity leave and pay extended: For babies due from 3 April 2011, the Government intends fathers to benefit from up to 26 weeks' additional paternity leave if the mother of the child returns to work before the end of her maternity leave period. Employers will need to ensure their policies are updated by mid 2010 to allow for the changes.

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

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RadcliffesLeBrasseur will be holding a workshop on Religion and Belief in the workplace on 23rd and 25th February 2010.

Full details are on our website. www.rlb-law.com



Disclaimer

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