

Employment Update

October 2009

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Mr Pereda was employed by Madrid Movilidad. He booked four weeks annual leave but subsequently suffered an accident at work which prevented him from working for most of this period. [More...](#)

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Tips will no longer count towards the national minimum wage

Since the National Minimum Wage Act came into force in 1999, it has been legal for service charges, tips, gratuities and cover charges to count towards payment of the national minimum wage in certain circumstances. [More...](#)

Consultation on regulations to permit maternity leave to be shared between parents

The Government has announced that it will begin consultation on new regulations to permit fathers to take up to six months of outstanding maternity leave if the child's mother chooses to return to work. [More...](#)



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Government to tighten up rules on employing skilled foreign workers

The Government has accepted all 16 recommendations of the Migration Advisory Committee to make it harder for skilled foreign workers to take jobs in the UK under the points-based system. [More...](#)

Equality and Human Rights Commission inquiry finds women in the finance sector receive bonuses 80% lower than men

The Equality and Human Rights Commission (EHRC) has published its Finance Service Inquiry into sex discrimination and the gender pay gap. [More...](#)

Any comments or queries?

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Case notes

Workers who are sick during pre-booked holiday may take annual leave at a later date

Mr Pereda was employed by Madrid Movilidad. He booked four weeks annual leave but subsequently suffered an accident at work which prevented him from working for most of this period. Because he had been sick during his original annual leave period, Mr Pereda asked to take the four-week holiday at a later date. His employer refused and Mr Pereda challenged this decision in the Spanish courts.

The court asked the European Court of Justice to determine whether the Working Time Directive allows a worker to retake annual leave if he had to take sick leave on a date when the holiday was arranged.

The ECJ stressed that the entitlement to annual leave is an important principle of EC law and all workers must have the opportunity to exercise this right. In order to give a worker who is on sick leave during a period of previously scheduled annual leave the full benefit of his annual leave, it is necessary to ensure he has the right, on request, to take that annual leave at a later period. This may mean that the worker can retake holiday after the end of the holiday year. This decision will have immediate effect on public sector employers only. The private sector is not affected by the decision and can await the likely amendment to the Working Time Regulations 1998 before it has to comply with it.

Pereda v Madrid Movilidad SA

Employer's motive is irrelevant in race discrimination claims

Ms Ahmed, an employee of Amnesty International who is of Sudanese ethnic origin, applied for a promotion to the position of Sudanese researcher. She was not appointed because Amnesty International considered that her ethnicity would compromise its perceived impartiality and expose her (and her companions) to an increased safety risk when visiting the region. Ms Ahmed resigned and brought claims for race discrimination and constructive dismissal.

Her claims were initially upheld by the tribunal, which held that the decision not to appoint her to the post constituted direct discrimination. The tribunal rejected Amnesty International's argument that sending her to Sudan would have meant it breached its duty as her employer under health and safety legislation. Amnesty International appealed to the EAT.

The EAT noted that the employer's motive, however benign, is irrelevant to establishing discrimination where race is the reason

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for the treatment in question. The EAT therefore upheld the race discrimination claim. However, it also held that the tribunal had been wrong to find that Ms Ahmed had been constructively dismissed. Amnesty International had reached its decision after a thorough and reasoned process, and was not motivated by racial prejudice. The test whether the relationship of trust and confidence was destroyed is an objective one. Although Ms Ahmed may have been upset at the decision, this does not mean that her employer had destroyed the mutual duty of trust and confidence.

Amnesty International v Ahmed

Decision not to redeploy to avoid pension liability was age discrimination

Mr Wooster was employed by the London Borough of Tower Hamlets but was seconded to East End Homes (EEH). He was aged 49 and upon his 50th birthday he would have been eligible for an early retirement pension from the council. His secondment was due to come to an end and, although EEH offered to extend it until he became entitled to his pension, the council rejected the offer and dismissed him on grounds of redundancy stating, "If he goes now we do save the pension". Mr Wooster brought a claim for unfair dismissal and age discrimination.

The tribunal held that his dismissal was procedurally unfair. It also held that he had been discriminated against because his age and impending entitlement to receive a pension was the reason why the council declined the offer of the extended secondment as an alternative to making him redundant.

The council appealed and argued that it did not have the power to agree to the proposed extension of the secondment and to do so would have been unlawful. The EAT accepted this argument but dismissed the appeal because the motivation for refusing the extension was to avoid paying Mr Wooster his pension, not because it was unlawful.

London Borough of Tower Hamlets v Wooster

Compensation for constructive dismissal: alternative earnings during notice period can be taken into account

Employers who unfairly dismiss employees summarily without notice must compensate them fully in respect of their notice period without reduction for earnings received from a new employer.

The Court of Appeal has held however that this does not apply in the case of constructively dismissed employees. When calculating the amount of the compensatory award due to a constructively dismissed employee, tribunals must offset earnings which the employee receives from alternative employment during the notice period.

Stuart Peters Limited v Bell

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Legislation

Tips will no longer count towards the national minimum wage

Since the National Minimum Wage Act came into force in 1999, it has been legal for service charges, tips, gratuities and cover charges to count towards payment of the national minimum wage in certain circumstances. The Government has recently stated that it will prevent employers using tips or service charges to bring workers' pay up to the level of the national minimum wage. The change in law came into effect on 1 October 2009.

Consultation on regulations to permit maternity leave to be shared between parents

The Government has announced that it will begin consultation on new regulations to permit fathers to take up to six months of outstanding maternity leave if the child's mother chooses to return to work. Fathers could also receive statutory maternity pay if the mother has not used up her full 39-week entitlement. Parents who wish to benefit from the new scheme will have to "self-certify" to their employers that they are eligible to do so.

The new law is intended to come into force by April 2010 and will apply to parents whose babies are due on or after 3 April 2011.

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News

Government to tighten up rules on employing skilled foreign workers

The Government has accepted all 16 recommendations of the Migration Advisory Committee to make it harder for skilled foreign workers to take jobs in the UK under the points-based system. The move is intended to ensure that British workers are not only first in line for these jobs, but also have longer to apply.

From 2010, all jobs will have to be advertised in a Jobcentre for four weeks before employers look for staff from outside Europe. In addition, overseas workers who want to transfer to the UK base of their company will need to have worked for that company for a year, rather than just six months, prior to the move. The minimum salary which allows a worker to qualify as a skilled worker will also rise from £17k to £20k.



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Equality and Human Rights Commission inquiry finds women in the finance sector receive bonuses 80% lower than men

The Equality and Human Rights Commission (EHRC) has published its Finance Service Inquiry into sex discrimination and the gender pay gap. Among other things, the report highlights the difference in performance-related pay received by male and female workers in the financial services industry. The gross salary of women working full-time is 55% lower than an equivalent man's salary. This compares to a pay gap of 28% in the economy overall. When performance-related pay is compared, the gap widens with women earning 80% less than men.

To tackle these problems, the EHRC recommends that companies set gender equality as a business objective, increase pay transparency, and increase support for staff with caring responsibilities.
