

Employment Update

December 2009

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Mr Nicholson was dismissed by reason of redundancy. He alleged that he had actually been dismissed because of his belief in climate change and brought a claim for discrimination on the grounds of religion or belief. [More...](#)

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New right to request time off work for training

New legislation which gives employees the right to request time off for training is expected to be introduced in April 2010. [More...](#)

Any comments or queries?

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Case notes

Belief in climate change can be a 'philosophical belief'

Mr Nicholson was dismissed by reason of redundancy. He alleged that he had actually been dismissed because of his belief in climate change and brought a claim for discrimination on the grounds of religion or belief.

The tribunal had to establish whether Mr Nicholson could pursue his claim as a philosophical belief. The tribunal held that, for a belief to qualify for protection, it must have sufficient cogency, seriousness, cohesion and importance, in addition to being worthy of respect in a civilised society. Mr Nicholson stressed that his views were not merely opinion – his philosophical belief in the danger of climate change affected most aspects of his life, including his choice of home, how he travels and what he eats.

The tribunal upheld Mr Nicholson's claim.

Nicholson v Grainger plc & ors

Exemption to duty to make reasonable adjustments

Mr Alam received a 12-month written warning for leaving work early without permission. He suffered from depression which caused him to lose concentration. He argued that his failure to seek permission for his absence was a symptom of his depression and brought a claim for failure to make reasonable adjustments under the Disability Discrimination Act 1995.

He succeeded at tribunal but his employer appealed. The EAT considered whether the employer fell within the exemption from the duty to make reasonable adjustments in the Act. It held that the test was whether the employer either knew or ought to have known that the employee was disabled, and whether it knew or ought to have known that his disability would place him at a substantial disadvantage.

The EAT held that the employer did satisfy the test because although it ought to have known that he was disabled, it ought not to have known that his disability would place him at a substantial disadvantage. There was no evidence that difficulty asking for permission was a feature of Mr Alam's disability.

Secretary of State for the Department for Work and Pensions v Alam

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Mistaken belief that there was no TUPE transfer does not breach regulations

The Royal Mail planned to transfer a large number of its post offices to WH Smith. It mistakenly believed that no Post Office employees would transfer under TUPE to WH Smith because they would either take voluntary redundancy or be redeployed. It therefore did not comply with its obligations to inform and consult any affected employees in connection with the transfer.

The EAT held that provided the employer genuinely believed that there is no TUPE transfer, it would not breach the information and consultation regulations, even if that belief was mistaken.

The Court of Appeal agreed. It held that the employer does not need to give a warranty that this belief is correct. However, the court stated that if the employer had not taken legal advice on whether there was a TUPE transfer, it could be difficult for it to establish a genuine belief.

Royal Mail Group Limited v Communication Workers Union

Volunteer not covered by the Disability Discrimination Act

Ms X volunteered as a part-time adviser to the Citizens Advice Bureau. She did not have an employment contract and was not expected to turn up for every shift. The CAB asked her not to continue working for the organisation and she brought a claim for disability discrimination.

The Tribunal, at a pre-hearing decided that Ms X was not an employee and therefore was not covered by the Disability Discrimination Act 1995. Ms X appealed.

The EAT upheld the Tribunal's decision that her claim should be struck out. Although some types of voluntary work are covered by the Act, Ms X's arrangement was not.

X v Mid Sussex Citizens Advice Bureau

Legislation

New right to request time off work for training

New legislation which gives employees the right to request time off for training is expected to be introduced in April 2010. The proposals would work in the same way as the right to request flexible working. Employers would have to consider the request but would be able to turn it down on certain specified grounds.

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Increase in Vento awards for injury to feelings

The Vento bands for awarding damages for injury to feelings in discrimination cases have been increased to reflect inflation.

The new bands are:

- Lower band: up to £6k (formerly up to £5k)
- Middle band: between £6k and £18k (formerly between £5k and £15k)
- Upper band: between £18k and £30k (formerly between £15k and £25k)

Government commissions survey of employers on default retirement age

The Government has brought forward its review of the default retirement age of 65. It will look at whether the DRA can be raised and has asked employers to respond to a survey on their employment practices relating to age. The Government is looking for evidence in the following areas, amongst others:

- the operation of the default retirement age in practice
- the reasons that businesses use mandatory retirement ages
- the impacts (positive and negative) on businesses, individuals, and the economy, of raising or removing the default retirement age
- the experience of businesses operating without a default retirement age
- how could any costs of raising or removing the DRA be mitigated and benefits realised?

Sick notes to be replaced with 'fit notes'

A consultation titled "Reforming the medical statement" is underway. It is expected in April 2010 that 'sick notes' will be replaced by 'fit-notes', which allow the doctor to indicate whether an employee is fit for some work and suggest adjustments that could be taken by the employer to facilitate the employee's return to work.

Tax relief on childcare vouchers to be removed by April 2015

It was announced at the Labour Party Conference in September that the Government intends to phase out tax relief on employer-supported childcare by April 2015 and put the money into providing free childcare for two-year-olds. It is proposed that tax relief will no longer be available for children born after April 2011. However, it has recently been announced that tax relief will only be abolished for higher rate tax payers.

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