

Employment Update

January 2010

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The Equality Bill has now completed its report stage and had its third reading in the House of Commons. [More...](#)

Financial Services Bill

HM Treasury has now published the Financial Services Bill which, if enacted, will give the Treasury power to make regulations concerning the disclosure of remuneration and will require the FSA to require regulated companies to have remuneration policies that are consistent with effective risk management and international standards, including those adopted by the G20. [More...](#)

Any comments or queries?

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Case notes

Identifying harassment

Miss Veakins, a trainee electrician, successfully brought a claim under the Protection from Harassment Act 1997 (the Act) after she was victimised and demoralised by her supervisor and became clinically depressed. It was held that the employer's conduct crossed the line into conduct which was oppressive and unreasonable. It was also conduct that would, in the court's opinion, sustain criminal liability. The conduct had been "extraordinary".

The Court of Appeal held that, when deciding if conduct amounts to harassment for the purposes of the Act, the primary focus should be on whether the conduct is "oppressive and unacceptable", although the conduct should also be of the type that "would sustain criminal liability".

The Court of Appeal noted that in the great majority of cases involving harassment, high-handed or discriminatory misconduct by or on behalf of an employer would be more fittingly dealt with in the Employment Tribunal. However, this case does clarify that a civil claim for harassment under the Act does remain open for employees where the conduct complained of crosses the threshold of being oppressive and unacceptable (rather than being unattractive, unreasonable or regrettable).

Veakins v Kier Islington Ltd

Discrimination compensation can include "stigma" loss flowing from the pursuit of the claim

Mr Chagger was made redundant from Abbey National in circumstances which a tribunal held amounted to unfair dismissal and race discrimination. He made extensive attempts to get another similar job but was not successful and claimed that this was because of the stigma of having brought a claim against Abbey National. The tribunal made an award of over £2m, which included (among other things) future loss based on the claimant's inability to work in the financial services industry ever again.

Abbey National appealed. The Court of Appeal held that employees who suffer a stigma when searching for a new job, as a result of having brought a discrimination claim against a previous employer, are entitled to be compensated for that loss by their previous employer. Such loss will normally be reflected in the award for loss of earnings.

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DDA covers associative discrimination

The claimant was employed by EBR Attridge LLP (formerly Attridge Law) as a legal secretary from January 2001. She is not disabled herself, but is the primary carer of her disabled son. In March 2005, she accepted voluntary redundancy, and subsequently brought an unfair constructive dismissal claim and claims under the Disability Discrimination Act 1995 (DDA), based on various allegations of harassment and direct discrimination.

The EAT upheld the tribunal's decision that the DDA should be interpreted to cover "associative discrimination". In other words, the employer was liable for discrimination by reason of, and harassment related to, a third person's disability.

While this judgment means that an employee can potentially bring a claim alleging discrimination on the ground of another person's disability, it is limited to allegations of direct discrimination and harassment and does not cover other forms such as the duty to make reasonable adjustments.

EBR Attridge Law LLP and anor v Coleman

Legislation

Compensation limits reduce

For the first time ever the annual review of compensation limits has resulted in a reduction to the maximum compensatory award limit. The reduction reflects the decrease of 1.4% in the Retail Prices Index from September 2008 to September 2009. Under the Employment Rights (Revision of Limits) Order:

- the maximum compensatory award for unfair dismissals drops from £66,200 to £65,300. A week's pay for the purposes of calculating the basic award and redundancy payment will remain at £380
- the minimum amount of compensation where an individual is unlawfully excluded or expelled from a union and not admitted or re-admitted by the date of a tribunal application falls from £7,300 to £7,200

The revisions made by the Order take effect when the event giving rise to the entitlement to compensation or other payment occurs on or after 1 February 2010.

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Statutory payments rise

In a statement to Parliament, Yvette Cooper, the Secretary of State for Work and Pensions, proposed that the earnings threshold for statutory adoption, maternity, paternity and sick pay would rise from £95.00 to £97.00 per week.

Statutory adoption, maternity and paternity pay and maternity allowance will all rise from £123.06 to £124.88, but statutory sick pay will remain at £79.15.

It is expected that these changes will come into effect in April 2010.

Increased protection for disabled people in the Equality Bill

The Equality Bill has now completed its report stage and had its third reading in the House of Commons. The Bill contains a number of amendments including the addition of a new clause on pre-employment enquiries about disability and health, which aims to prevent employers from asking questions about disability and then failing to consider candidates because of their disability. Such enquiries are thought to be one of the main reasons why disabled people often fail to reach the interview stage. The majority of other amendments clarify existing provisions.

Financial Services Bill

HM Treasury has now published the Financial Services Bill which, if enacted, will give the Treasury power to make regulations concerning the disclosure of remuneration and will require the FSA to require regulated companies to have remuneration policies that are consistent with effective risk management and international standards, including those adopted by the G20. The Bill will also give the FSA the power to prohibit terms in employment contracts that encourage excessive risk-taking or include multi-year remuneration guarantees and to require any payments made under such void arrangements to be clawed back.
