

Employment Update

April 2010

Case notes

High Court rules in City broker "team move" case

A group of brokers working for Tullett resigned with a view to join a rival firm, BGC. [More...](#)

Dismissal unfair when informal procedure abandoned in favour of formal action

The employer received several complaints from staff about Mr Sakar's "harassing and distressing" behaviour and decided to deal with the allegations under its 'Fair Blame Policy' (FBP), an informal procedure designed for conduct which does not constitute a serious or gross offence. [More...](#)

Employee had no remedy for discrimination by agency worker

Ms Okerago alleged that in July 2006 Ms Dower, an agency worker, made a racially offensive remark to her. Ms Okerago raised a grievance and Ms Dower was eventually withdrawn from the workplace, although she was retained by the agency. [More...](#)



[View all](#)

News

Budget Report

The Chancellor delivered his Budget Report on 24 March 2010. [More...](#)

National Minimum Wage increases for October 2010

The new hourly rates will be as follows. [More...](#)

Changes to the immigration rules

On 18 March 2010 the Home Office published changes. [More...](#)

Legislation

Update - Additional Paternity Leave and Additional Statutory Paternity Pay (General) Regulations

The draft Regulations have now been approved by the House of Lords. [More...](#)

Equality Bill

The Bill passed the final stage in the House of Commons on 6 April 2010. [More...](#)

Draft Regulations on Disclosure of Executive Remuneration in large banks and building societies

The draft Executives' Remuneration Report Regulations 2010 have been published. [More...](#)

RPC sponsors In-House Counsel 2010

RPC is once again one of the sponsors for the In-House Counsel conference, which is held in London 25-26 May. Our Chief Operating Officer Richard Emanuel is also one of the expert panel. For more details click here: <http://www.rpc.co.uk/FileServer.aspx?oID=845&lID=0>

Any comments or queries?

Cath Thorpe
+44 (0)20 3060 6479
cath.thorpe@rpc.co.uk

As part of our commitment to corporate social responsibility we are proud to support The Anthony Nolan Trust as our current Charity of the Year (www.anthonynolan.org.uk).

This is a summary of recent developments. It should not be regarded as a substitute for advice on how to act in any particular case. For further information please contact the author.

Case notes

High Court rules in City broker “team move” case

A group of brokers working for Tullett resigned with a view to join a rival firm, BGC. The brokers then claimed constructive dismissal on the basis that Tullett had breached the relationship of trust and confidence by conducting presentations discouraging the brokers from joining BGC and by suspending individual brokers for recruiting other team members for BGC.

The court held the brokers had not been constructively dismissed by Tullett because BGC had induced the brokers to breach their contracts. The court ordered the brokers to repay retention and loyalty bonuses to Tullett.

An injunction preventing BGC from recruiting further from Tullett had been granted by the High Court in April the previous year. The court held that this would continue for a further 14 days only as the court assumed that the exposure of BGC's conduct would curb its unlawful recruitment in the future. However, the court enforced by way of injunction the brokers' garden leave provisions and restrictive covenants but for a period of only 12 months, leaving the brokers free to start work with BGC after that period.

Tullett Prebon plc and others v BGC Brokers LP and others

Dismissal unfair when informal procedure abandoned in favour of formal action

The employer received several complaints from staff about Mr Sakar's “*harassing and distressing*” behaviour and decided to deal with the allegations under its ‘Fair Blame Policy’ (FBP), an informal procedure designed for conduct which does not constitute a serious or gross offence.

The FBP procedure broke down when Dr Sakar refused to allow the Employer's Medical Director to send a report about his behaviour to the General Medical Council. Following the breakdown of the FBP, the matter was transferred to a formal disciplinary procedure and Dr Sakar was summarily dismissed for gross misconduct. Dr Sakar's internal appeal was unsuccessful and he issued proceedings for unfair dismissal.

The Court of Appeal agreed with the Tribunal's decision that the employer had chosen to deal with the matter through the FBP, implying that the misconduct alleged was of a relatively minor nature. The same offences could not then be regarded as matters of such a grave and serious nature as to constitute gross misconduct and lead to summary dismissal later.

Sakar v West London Mental Health Trust



[Back to contents](#)

[Back to contents](#)

Employee had no remedy for discrimination by agency worker

Ms Okerago alleged that in July 2006 Ms Dower, an agency worker, made a racially offensive remark to her. Ms Okerago raised a grievance and Ms Dower was eventually withdrawn from the workplace, although she was retained by the agency.

Ms Okerago brought a claim against the employer that it was liable for discrimination and racial harassment by the agency worker. The employer was found liable for direct discrimination and appealed to the Employment Appeal Tribunal.

The EAT held:

1. there were no findings of fact to support a conclusion that the agency worker was the employer's agent or employee for the purposes of the Race Relations Act;
2. action or inaction by the employer after the alleged discrimination took place could not be deemed to be knowingly aiding discrimination by the agency worker; and
3. the agency worker could not be held liable personally because she was not the claimant's employer.

May & Baker Ltd v Okerago

News

Budget Report

The Chancellor delivered his Budget Report on 24 March 2010. The key announcements to note for employers and employees are:

- introduction of a new 50% rate of income tax for high-income individuals
- an up-to-date summary of HM Revenue & Customs' proposals for the bank payroll tax was released following consultations with financial sector firms
- tax breaks for company cars with zero emissions

National Minimum Wage increases for October 2010

The new hourly rates will be as follows:

- Standard rate (workers aged over 21): £5.93 (rising from £5.80)
- Development rate (workers aged between 18 and 20): £4.92 (rising from £4.83)
- Young workers rate (workers aged under 18 but above the compulsory school age who are not apprentices): £3.64 (rising from £3.57)
- Apprentices (under 19 years of age or 19 and over but in the first year of their apprenticeship): £2.50

The adult standard rate has been extended to include 21-year-olds.

Changes to the immigration rules

On 18 March 2010 the Home Office published changes to the immigration rules, which will come into effect on 6 and 7 April 2010.



[Back to contents](#)

[Back to contents](#)

Legislation

Update - Additional Paternity Leave and Additional Statutory Paternity Pay (General) Regulations

Previous Updates have reported on the proposed Additional Paternity Leave and Additional Statutory Paternity Pay (General) Regulations. Despite the Conservative Party claiming that the Government should shelve these plans until after the election, draft regulations have now been approved by the House of Lords and came into force on 6 April 2010 but will have effect only in relation to children whose expected week of birth (or matching for adoption) begins on or after April 2011.

The regulations will permit employed fathers or partners of mothers to:

- Take up to six months of outstanding maternity leave if the child's mother chooses to return to work
- Receive statutory maternity pay if the mother has not used up her full 39-week entitlement
- Receive a new additional statutory paternity pay from their employers where the mother has returned to work

Equality Bill

The Bill passed the final stage in the House of Commons on 6 April 2010. The Bill has now been sent for Royal Assent before it becomes The Equality Act 2010. Most of the legislation is expected to take effect in October this year with the rest being delayed until Spring 2011.

Draft Regulations on Disclosure of Executive Remuneration in large banks and building societies

The draft Executives' Remuneration Report Regulations 2010 have been published.

Under the new proposals, the large banks and building societies covered by the draft Regulations will be obliged to disclose the remuneration packages of executives earning £500k or more.

Future Updates will report on the Regulations' progress, so watch this space!

[Back to contents](#)