

Employment Update

May 2010

Case notes

No age discrimination when employee unable to obtain degree before retirement

In *Homer v Chief Constable of West Yorkshire Police*, the Court of Appeal held that an employee in his 60s, who would be unable to complete a degree before he retired, was not indirectly discriminated against on grounds of age when his employer required possession of a degree for admittance to the highest level of its career structure. [More...](#)

Swapping the role of a disabled employee with that of another employee is capable of being a reasonable adjustment

In *Chief Constable of South Yorkshire Police v Jelic*, the EAT held that before medically retiring a disabled employee the employer should consider whether it would be possible to swap the role of a disabled employee with that of another employee who has a role which would be more manageable. [More...](#)

Not a TUPE transfer when neither work in progress or employees are transferred

In *Ward Hadaway Solicitors v Love, Scott and Capsticks Solicitors* the EAT held that the "service provision change" provisions of TUPE do not apply when a client, which had dedicated staff at a firm of solicitors to look after its cases, moves its instructions in relation to new work to a different firm but the client continues to use the original firm and employees to complete the existing work in progress. [More...](#)

Whistleblowing claimant need not have blown whistle to current employer

In *BP plc v Elstone*, the claimant made disclosures to managers of his previous employer while employed by another business. When the current employers became aware of this the claimant was sacked for revealing confidential information. [More...](#)

Tribunal awards holiday pay in respect of 15-month sickness absence

In *Rawlings v The Direct Garage Door Company Ltd*, an employment judge held that a worker who had been on sick leave for the last 15 months of his employment was entitled to statutory holiday pay in respect of that period. [More...](#)



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Legislation

Financial Services Act 2010: new powers for disclosure and regulation of financial sector remuneration

The Financial Services Act 2010 received Royal Assent on 8 April 2010... [More...](#)

New right for employees to request time off to undertake study or training

The Apprenticeships, Skills, Children and Learning Act 2009 has introduced a new right for employees to request time off to undertake study or training. [More...](#)

Any comments or queries?

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Case notes

No age discrimination when employee unable to obtain degree before retirement

In *Homer v Chief Constable of West Yorkshire Police*, the Court of Appeal held that an employee in his 60s, who would be unable to complete a degree before he retired, was not indirectly discriminated against on grounds of age when his employer required possession of a degree for admittance to the highest level of its career structure.

The Court of Appeal held that the object of the regulations is not to legislate against the general unfairness of age, whether juvenile or geriatric. The barrier to the employee's promotion was not age but the fact he would retire before he could obtain the qualification for promotion.

The Court of Appeal noted that while the need for a degree imposed a barrier, it applied to everyone in the same way and it was not, in principle, any more difficult for an older person to obtain the qualification than it was for a younger person.

Further, the Court considered that the financial disadvantage that resulted from being unable to complete a degree before retirement was the inevitable consequence of age and not a consequence of age discrimination.

Swapping the role of a disabled employee with that of another employee is capable of being a reasonable adjustment

In *Chief Constable of South Yorkshire Police v Jelic*, the EAT held that before medically retiring a disabled employee the employer should consider whether it would be possible to swap the role of a disabled employee with that of another employee who has a role which would be more manageable.

The EAT agreed with the tribunal that a job-swap was a reasonable adjustment under the Disability Discrimination Act. Therefore, where an employee works in an area where the disabled employee has recognised expertise and in a role which would be manageable for the disabled employee the employer should consider swapping the two employees over. The tribunal and EAT did note that as part of this process the non-disabled employee must be consulted.

Not a TUPE transfer when neither work in progress or employees are transferred

In *Ward Hadaway Solicitors v Love, Scott and Capsticks Solicitors* the EAT held that the "service provision change" provisions of TUPE do not apply when a client, which had dedicated staff at a firm of solicitors to look after its cases, moves its instructions in relation to new work to a different firm but the client continues to use the original firm and employees to complete the existing work in progress.

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The EAT found that the dedicated staff at the original law firm did satisfy the TUPE definition of “an organised grouping of employees situated in Great Britain which has as its principal purpose the carrying out of the activities concerned on behalf of the client”. However, the EAT found that no activities had ceased to be carried out by the original firm, which is a prerequisite for TUPE to apply. Although new work was no longer being received, ongoing work remained with the firm, which meant the service that had been provided continued and this prevented a “service provision change”.

Whistleblowing claimant need not have blown whistle to current employer

In *BP plc v Elstone*, the claimant made disclosures to managers of his previous employer while employed by another business. When the current employers became aware of this the claimant was sacked for revealing confidential information.

The EAT held that a worker who brings a claim against his current employer alleging that he has suffered a detriment for whistleblowing need not have been employed by the same employer when the protected disclosure was made.

The EAT held that even if the two employments are in no way connected, the purpose of the legislation is to protect employees and workers, whoever they work for. The whistleblowing legislation was held to provide that the worker is protected from suffering a detriment which affects their current employment, even if the disclosure is related to any earlier employment.

Tribunal awards holiday pay in respect of 15-month sickness absence

In *Rawlings v The Direct Garage Door Company Ltd*, an employment judge held that a worker who had been on sick leave for the last 15 months of his employment was entitled to statutory holiday pay in respect of that period. The non-payment of holiday pay amounted to an unlawful deduction from wages contrary to the Employment Rights Act 1996, even though the worker had not actually taken statutory holiday during the period in question.

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Legislation

Financial Services Act 2010: new powers for disclosure and regulation of financial sector remuneration

The Financial Services Act 2010 received Royal Assent on 8 April 2010 and includes powers for:

1. HM Treasury to make regulations which require detailed disclosure of executive remuneration in financial sector firms (with effect from 8 April 2010).
2. The Financial Services Authority (FSA) to make rules governing the remuneration policies and practices of financial sector firms (with effect from 8 June 2010).

Future Updates will report on the Act's implementation.

New right for employees to request time off to undertake study or training

The Apprenticeships, Skills, Children and Learning Act 2009 has introduced a new right for employees to request time off to undertake study or training.

It applies to employees with 26 weeks' service or more and employers will be required to give serious consideration to all requests.

The right was made available to employees in organisations with 250 or more employees from 6 April 2010 and will be extended to all employees from April 2011.