

Employment Update

July 2010

Case notes

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Employee fraudster wins unfair dismissal claim but must pay costs

In *Nicolson Highlandwear Ltd v Nicolson*, the employee, Mr Nicolson, was dismissed summarily when the employer discovered he had been defrauding them through false accounting, running his own business out of the employer's premises and diverting customers to that business. His claim for unfair dismissal was successful as the employer had not followed a fair procedure, but the tribunal awarded him no compensation because the dismissal was completely caused by his own fraudulent conduct. [More...](#)



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Equality Act

The Coalition Government has confirmed that the original October 2010 implementation date for the first wave of Equality Act implementation will go ahead on 1 October 2010, as originally planned by the previous Labour Government.

June 2010 Budget

Key employment implications arising out of the June Budget

Part-time working at record level

New figures published by the Office for National Statistics show that the number of people working part-time is at a record high

Tribunal statistics for 2009/10 reveal marked increase in claims

The Tribunals Service has published its annual statistics for 1 April 2009 to 31 March 2010.

Any comments or queries?

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

Case notes

Capping redundancy payment to prevent age-related windfall justified

In *Kraft Foods UK Ltd v Hastie*, Kraft Foods UK Ltd operated a voluntary redundancy scheme under which employees received 3.5 weeks pay for each year of service.

However, the scheme applied a “cap” to ensure that an employee’s redundancy payment did not exceed the amount that they would have earned, at their current rate of pay, had they remained in employment until normal retirement age (65). Mr Hastie, who was two years from retirement, had his voluntary redundancy pay reduced by £13,600 on application of the cap. He complained of unlawful age discrimination.

The EAT held that the “cap” was a proportionate means of achieving a legitimate aim and therefore not discriminatory.

Employee working abroad on rotational basis could bring unfair dismissal claim

In *Ravat v Halliburton Manufacturing and Services Ltd*, the Inner House of the Court of Session held by a majority that an employee who lived in Great Britain but worked in Libya on a “one month on, one month off” rotational basis qualified for unfair dismissal protection under the Employment Rights Act 1996.

The Court of Session held that to qualify for unfair dismissal protection employees will need to demonstrate a strong connection with Great Britain and British employment law. In this case the claimant, as a British national with his normal place of residence in England who paid UK taxes, could demonstrate a “sufficiently strong connection” between his employment and Great Britain to qualify for the protection.

Employee fraudster wins unfair dismissal claim but must pay costs

In *Nicolson Highlandwear Ltd v Nicolson*, the employee, Mr Nicolson, was dismissed summarily when the employer discovered he had been defrauding them through false accounting, running his own business out of the employer’s premises and diverting customers to that business. His claim for unfair dismissal was successful as the employer had not followed a fair procedure, but the tribunal awarded him no compensation because the dismissal was completely caused by his own fraudulent conduct.

The employer applied for costs based on Mr Nicolson’s unreasonable behaviour in bringing the case. The tribunal refused on the basis that Mr Nicolson had not lied to the tribunal; that he had succeeded in showing that the dismissal was unfair; that claimants are entitled to seek findings of unfair dismissal

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without the objective of compensation; and that unrepresented claimants should not be discouraged from asserting their rights.

The EAT overturned this decision on the basis that Mr Nicolson had persisted in a claim knowing that he had acted dishonestly, and that this had caused his dismissal. Success in all or part of his claim did not necessarily mean it was reasonable for him to bring it.

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Equality Act

The Coalition Government has confirmed that the original October 2010 implementation date for the first wave of Equality Act implementation will go ahead on 1 October 2010, as originally planned by the previous Labour Government.

The first wave will implement the main sections of the Act relating to employment, equal pay and services, public functions and associations and education (further and higher). These sections will replace the current anti-discrimination legislation for these areas.

The Coalition Government has not yet confirmed whether it will implement the power to require larger employers to publish gender pay gap information. A Government Equalities Office spokesperson has said that this issue is still under consideration, and an official announcement will follow.

We will report on the implementation and any further announcements in future Updates.

Key employment implications arising out of the June Budget

Default retirement age

The Budget confirmed that the Government will *"consult shortly on how it will quickly phase out the Default Retirement Age from April 2011"*.

Deregulation of employment law

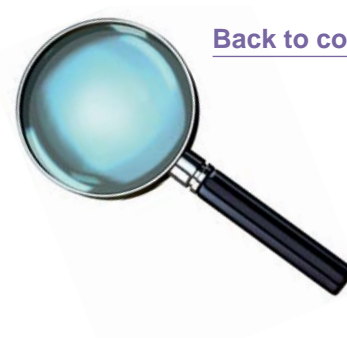
The Chancellor announced that the Government's deregulation plans (which are due to be published in more detail by BIS this month) include an immediate review of employment laws by the relevant Government departments *"to ensure maximum flexibility, protection of fairness and the promotion of competitiveness."*

Reduction in tax and NICs for the lower-paid

With effect from 6 April 2011, the income tax personal allowance for those aged under 65 will increase by £1,000 to £7,475. However, legislation will be introduced to ensure that higher rate taxpayers do not benefit from the increase. This will be achieved by lowering the threshold above which higher rate tax is paid. The exact figure will be announced in the autumn.

The NIC increase of £570 in the primary (employee) threshold will take effect from 6 April 2011 to coincide with the increase of 1% in employee and employer contributions.

The secondary (employer) threshold will be increased by £21 from 6 April 2011.



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Indexing of benefits

The Chancellor announced that benefits will be linked to the Consumer Prices Index from April 2011. This is expected to result in smaller increases to some benefits payments, which is expected to include sick pay and pay for family-related leave, such as maternity pay.

50% income tax rate to remain in place

The 50% additional income tax rate will remain in place. The rate took effect on 6 April 2010 and applies to income over £150,000. The Conservatives have previously said that they do not regard the rate as a permanent feature of the tax system, but will not abolish it while asking public sector workers to accept a pay freeze.

Future Updates will report on the progress and implementation of the changes outlined above.

Part-time working at record level

New figures published by the Office for National Statistics show that the number of people working part-time is at a record high, with 7.82 million people are working part-time. The report found that many workers are working part-time involuntarily as they are unable to secure full-time employment.

Tribunal statistics for 2009/10 reveal marked increase in claims

The Tribunals Service has published its annual statistics for 1 April 2009 to 31 March 2010.

The number of claims submitted has increased 56% from the previous year. The most common types of claim accepted by the tribunal were for unfair dismissal, unauthorised deductions from wages and breach of contract. Notably, claims for failure to inform and consult on redundancy were down by 65% from the previous year.

Of all the claims disposed of, 32% were withdrawn, 31% were settled through Acas and nearly 13% were successful at tribunal.

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