



Raworths LLP Employment Newsletter May 2007

‘We’re all going on a.....’

With bank holidays galore in April and May and summer holiday season not far away make sure you are clued up on the latest employee rights on holiday entitlement.

- **Bank holidays**

In the case of *McMeneny-v-Capita Business Services Limited*, the Court of Session confirmed that an employer who does not give an employee pro-rata days off to reflect Monday bank holidays is **not** discriminating under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000.

Mr McMeneny worked on Wednesdays, Thursdays and Fridays. His employer allowed people to have bank holidays off but only if they actually worked on a bank holiday. Mr McMeneny claimed that this amounted to less favourable treatment on the grounds of his part-time status as most bank holidays fall on a Monday. It was held by the Court of Session that the treatment must have been **wholly** on the basis of the Mr McMeneny’s part-time status in order to have been successful.

It is important to note that in this case, the company operated on a seven-day working week and employers need to watch this space as to whether the same would have applied to a five-day working week.

- **Statutory Annual Leave**

The Department of Trade and Industry announced that statutory annual leave entitlement (which can be inclusive of bank holidays) will be increased from **20 days to 24 days from 1 October 2007**. On **1 October 2008**, it will increase from **24 to 28 days**. New research by the DTI has shown that of six million workers will benefit from an extra eight days’ holiday each year!!

Disability Discrimination

In the case of *O’Hanlon v HM Revenue & Customs*, the Court of Appeal confirmed that an employer is not required to pay sick pay to disabled persons as a result of the Disability Discrimination Act 1995 (“DDA”).

An employer is obliged to make reasonable adjustments for a disabled person and typically those off sick for a considerable period are more likely to be disabled under the DDA. Mrs O'Hanlon argued that failing to continue payments of sick pay amounted to discrimination. This was dismissed on the basis that the DDA should not be interpreted in a way that encourages people to stay away from work and in any event it was not reasonable to expect an employer to indefinitely subsidise those people on long-term sick who qualify as disabled.

Dismissal and Grievance Procedures

The DTI launched a consultation on 21 March 2007 with a view to abolishing the Statutory Dismissal and Grievance Procedures introduced in October 2004.

The consultation follows a report from local government which included the following recommendations:

- The repeal of the statutory dismissal and grievance procedures;
- The simplification of the Tribunal application forms;
- The provision of free mediation services for employment disputes perhaps to be dealt with via ACAS;
- The abolition of the ACAS fixed conciliation period. The conciliation period is a fixed period of time in which no hearing can take place and attempts are made to resolve the issue.
- The strengthening of the Employment Tribunal's power to award costs including taking into account every effort by the parties to resolve workplace disputes or settle cases.

At this stage, **this is only a consultation** and in the meantime, it is important to follow the current Statutory Dismissal and Grievance Procedures.

Age Discrimination

In Ireland, the case of *Cunningham v BMS Sales* has provided a warning for UK employers. In this case, the complainant was asked a number of questions about his age, at an early stage of the interview process, including questions on the application form about 'age', 'number of children' and 'date of birth'. The complainant argued that the questions were 'irrelevant and invasive'. He was not given the job, despite being suitable for it. The Equality Officer (the officer of the Labour Relations Commission who hears equality cases in Ireland) held that he had been discriminated against on the grounds of his age and awarded him 5,000 €.

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