



## RAWORTHS EMPLOYMENT NEWSLETTER April 2006

### Stress-Related Psychiatric Injury

The case of *Hone-v-Six Continents Retail Limited (2006)*, points to the dangers for both employees and employers of the employee working long hours. Here a pub manager collapsed after working very long hours for a year. Whilst his claim was in the courts rather than the Employment Tribunal, it has obvious implications under employment law. The employee had complained about working such hours, requested help and had not signed the Working Time Regulations opt-out clause. The employee was successful in his claim. So the key lessons here are:-

- 1 Do not overload your employees with work;
- 2 Address their concerns and, if legitimate, rectify them; and
- 3 Get them to sign an opt-out agreement to the Working Time Regulations !

### Consultation with Disabled Employees

The case of *Rothwell-v-Pelikan Hardcopy Scotland Limited (2006)* sends a warning to employers of the dangers of failing to properly consult with disabled employees before dismissing them for incapability. Here, the employee was seen by the employer's own occupational health therapist (OHT). The OHT felt a consultant's report was necessary. This report wasn't as pessimistic as the OHT's review of the disabled employee's condition. The OHT saw the employee again, but didn't provide a copy of the report. The OHT then wrote to the employer and said that the employee was not fit to return to work. The Employment Appeal Tribunal (EAT) said the failure to disclose the medical report contaminated what consultation had occurred. The EAT also felt that the employer had already taken the decision to dismiss before the final meeting. So the key lessons here are:-

- 1 Don't decide to dismiss an employee before having a final meeting;
- 2 Consult at every stage with the employee and provide them with copies of all medical reports; and
- 3 Make sure your OHT doesn't mess up !

### The New TUPE Regulations

The long-awaited new Regulations (at least long-awaited by employment lawyers!) come into force on 6 April 2006. Very briefly, some of the changes which may be of interest to those of you either considering purchasing or selling a company are as follows:-

- 1 Variations to contracts of employment because of the transfer – avoid unless they are for an economic, technical or organisational reason or the transferor is insolvent and it is agreed with the appropriate employee representatives.
- 2 Both the transferor and the transferee are jointly liable for failure to consult and inform employee representatives about the transfer.
- 3 The transferor is obliged to provide what is called employee liability information to the transferee at least two weeks before the transfer. This includes information about the number of employees, their contracts of employment and any court/tribunal cases brought by employees in the last two years, including any the transferor think they might bring. Liability for redundancy notice and other payments to employees of insolvent companies are not transferred to the transferee.

The Regulations also cover any 'service provision changes' i.e. first and subsequent contracting-in and contracting-out. The classic example is that of contract office cleaners.

### 'Rolled-Up' Holiday Pay

A number of employers allocate part of an employee's wage to holiday pay. This means that when a worker takes holiday, they have effectively already been paid for it. The European Courts of Justice has ruled that this is, on the face of it, unlawful. They said that:-

- 1 Employers can't just say that part of the wage represents a proportion of holiday pay. The payment has to be *in addition* to their normal pay.
- 2 Employers must pay holiday pay during the period of holiday – they can't just stagger it throughout the year.
- 3 If the employer does roll-up extra money, (over and above the normal pay) throughout the year, it can off-set this against payments it should make during the period of holiday.

In other words, employers **can roll-up holiday pay**, but they must follow the rules set out above – transparency being the key here.

### Amounts

From 1 February 2006: the maximum compensatory award for unfair dismissal rises from £56,800 to £58,400. The maximum week's pay for statutory purposes (e.g. redundancy) increases from £280 to £290.

From 6 April 2006 statutory sick pay rises from £68.20 per week to £70.05. Statutory maternity pay, statutory paternity pay and statutory adoption pay rises from £106 per week to £108.85 per week.

If you have any specific employment questions relating to your business, please contact::

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