



RAWORTHS EMPLOYMENT NEWSLETTER August 2005

Employment Tribunal Services (ETS) – Annual Report

The ETS has published its annual report for 2004/5. The figures show that there is a significant fall in applications to Tribunal – down to approximately 86,000 from 150,000 last year, a decrease of 25%! This is due, say the ETS, to an unusually high number of multiple cases last year which affected the 2003/4 statistics. There is no reliable indication as yet of whether the Statutory Dispute Resolution procedures, which came into force in October 2004, have had anything to do with the decrease (*or* whether the complex forms have!)

Average compensation awards for 2004/5 are as follows:

Unfair dismissal	£7,303 (median award £3,476)
Sex discrimination	£14,158 (median award £6,235)
Disability discrimination	£17,736 (median award £7,500)

37% of cases were settled via ACAS; 30% were withdrawn; 18% were successful at Employment Tribunal and 8% were unsuccessful at Employment Tribunal (7% were otherwise disposed of).

Holidays and Long-term Sick

In our April 2005 Newsletter, we set out the Court of Appeal's decision in the case of *Commissioners of the Inland Revenue-v-Ainsworth & Others* which stated that workers on long-term sick were not entitled to holidays/holiday pay during that period of sickness.

Since then, we have had a number of queries as to what happens if employees on long-term sick return to work during the leave year. Can the employer pro-rata their holiday entitlement accordingly?

Regulation 13 of the Working Time Regulations 1998, which provides the statutory four weeks entitlement, does not work on an accrual basis (except during the first and last year of employment). It states that "*a worker is entitled to four weeks holiday during the leave year*". So as long as the worker on long-term sick has at least four weeks working time left during the leave year when they return, it appears they can still claim the full entitlement. We therefore recommend that employers take a cautionary approach and avoid the temptation to pro-rata such leave until we have clearer guidance from either statute or case law.

Employment Equality (Sex Discrimination) Regulations 2005

In brief, these provide:

- a new definition of indirect discrimination;
- a new definition of harassment, to include sexual harassment and harassment on the grounds of someone's sex that is not sexual in nature;

- a new eight-week limit for responses to a sex discrimination questionnaire; and
- specific provisions making it clear that less favourable treatment of women on the grounds of pregnancy and maternity leave is unlawful sex discrimination.

The proposed regulations will come into effect on 1 October 2005. A full explanation of these will be provided in our October Employment Seminar (book early to avoid disappointment!)

Age Discrimination – Proposed Regulations

The Department of Trade and Industry (DTI) has produced draft Regulations on age discrimination. These are due to come into effect in 2006.

Although there is no specific indication, it appears that the Regulations will apply to old and young alike. The proposals include the following:

- removal of the upper age limits for the right to claim unfair dismissal and redundancy payments;
- a new duty on employers to consider an employee's request to continue working beyond retirement;
- prohibit unjustified age discrimination in employment;
- require employers who set their retirement age below the default age of 65 to justify it;
- removal of the upper age limits on eligibility for maternity pay (the mind boggles!).

Stress – A Cautionary Note

“Work-related stress” is increasingly found on employees' medical certificates. Employers are often nervous of contacting an employee whilst on sick leave for fear of being accused of harassing the employee and/or exacerbating the problem. Whilst this cautionary approach may seem the safest option at the time, it can lead to problems.

An employer is under a duty of care to its employees to provide a safe system of work. If, because of an employee's working conditions, they go on sick leave with work-related stress, an employer has a duty to address the causes of such stress. If they don't, it is unlikely that an employee will return to work or if they do, it's likely the employee will go on sick leave again.

Whilst it is important not to harass an employee who is on sick leave, it may be necessary, depending on the length of the sick note, to obtain the employee's consent to approach their GP for details of their illness, the probable causes of it and what the employer can do to help them return to work. The important point when contacting an employee in such circumstances, is to emphasize the fact that the employer wants to help. If such issues are not addressed at a relatively early stage, the absence is likely to continue (causing disruption to the business) and there may be criticisms of the employer for not seeking to resolve such work-related stress in a timely manner. If in doubt, call us!

If you would like any further information or if you have an employment issue you would like to discuss, please contact:

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