



## RAWORTHS EMPLOYMENT NEWSLETTER FEBRUARY 2006

### First 'Sex Industry' Unfair Dismissal Case !

In *Irene Everitt-v-Datapro Services* (the name of the company gives it away!), Ms Everitt won her case for unfair dismissal. Ms Everitt was a sex chat line employee who was dismissed for refusing to work full-time in an office where she alleged that other staff regularly used drugs whilst working. The GMB Union brought the case, having extended its membership to prostitutes and sex chat line employees. The regional secretary of the union stated "this is the first case that a trade union has won at an Employment Tribunal for a worker in this part of the economy".

### Pension Schemes

The latest legislation on occupational schemes is:

*The Occupational Pensions Schemes (Early Leavers; Cash Transfer Sums and Contribution Refunds) Regulations 2006* – (another catchy title, they must have been up all night thinking of this one!)

It states that if a member of an occupational pension scheme has at least three months qualifying service when they leave their employment, they can *either* opt to have a cash sum transferred to another pension scheme *or* a refund of their contributions. At present, they can only have a refund. The new Regulations are due to come into force in April 2006 and the Government hope this will provide an incentive for employees to build on their pension rights – as opposed to taking the money and running.

### Ministers of Religion are Employees

In *Perry-v-The Church of Scotland*, the majority of the House of Lords held that a minister of religion can be an employee notwithstanding the fact that it may be difficult to identify the employer!

### Deductions from Wages

In the case of *Elizabeth Claire Care Management Limited-v-Francis*, the Employment Appeal Tribunal held that a failure to pay wages *on time* can constitute an unlawful deduction of wages under the Employment Rights Act 1996.

In this case, the employee wasn't paid on time and consequently couldn't afford to pay child care so was unable to turn up for work. She was dismissed but had less than a year's service. Employees generally need a year's service to claim unfair dismissal. There are exceptions, however, one of them being the assertion of a statutory right. The Employment Appeal Tribunal said that she *could* succeed in a claim for unfair dismissal as they held that she was asserting a statutory right not to have unlawful deductions made from her wages.

Employers beware!


## Statutory Grievance Letters

Employment Appeal Tribunal decisions abound on what does and what does not constitute a statutory grievance letter which triggers the obligations of the employer under the Statutory Dispute Resolution Regulations. A request for flexible working does constitute a grievance letter; part of a discrimination questionnaire setting out the complaint doesn't. A resignation letter setting out grievances does, even though it doesn't specifically say a grievance is being raised. A letter of complaint about "lack of inclusiveness" does not constitute a grievance about discrimination and therefore does not amount to a grievance letter.

If either party doesn't comply with the procedure, the other party is under no obligation to continue. The "failing" party may also face a reduction or uplift of up to 50% in any award of compensation at the Employment Tribunal. The key points for employers to remember are:-

- If any grievance/complaint is made in writing – even if it is written on the back of a bus ticket! – treat it as a written grievance as per the statutory procedures.
- Invite the employee to a meeting to discuss the matter.
- Give your decision in writing and inform the employee of their right of appeal.
- If they appeal, hold an appeal hearing and write to them afterwards with the outcome.

If you comply with the above, you can respond to an Employment Tribunal claim with confidence – well, as far as procedure is concerned anyway!

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Risk Assessment	

Every employer has a duty to carry out a risk assessment – to identify any hazards or risks that his employees (or others) may be exposed to whilst at work! A risk assessment has to be "suitable and sufficient" which means that it should:

- Identify the significant risks arising from or in connection with the work;
- Be in proportion to the level of risk involved;
- Consider all those who may be affected by the risk and, in particular, any groups that are especially vulnerable;
- Be appropriate to the nature of the work;
- Be reviewed where there is reason to believe that it is no longer valid (for example due to a change in the nature of the work); and
- Be completed **before** the work commences.

The contents of the risk assessment should be communicated to the people carrying out (or affected by) the work. For free information to guide employers, log onto the HSE website at [www.hse.gov.uk](http://www.hse.gov.uk) or if you want to know more about how to prepare risk assessments, please contact Ian Lynch, Health & Safety Adviser at Strathmore Services Limited of Harrogate on 01423 530350. E-mail: [safety@strathmore.co.uk](mailto:safety@strathmore.co.uk).

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