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Employment Law Timetable

1st May 2020

Legislation Updates

May updates

There are no employment law legislation changes for May 2020.

No date

The 'Good Work Plan' contained a commitment to introduce extra statutory leave and pay for all parents of premature babies needing specialist care in a neonatal unit. The March 2020 budget policy paper confirmed the government's intention to introduce 12 weeks' paid leave for parents in this position 'so that parents don't have to choose between returning to work and taking care of their vulnerable new-born'. Announcements prior to the budget indicated the premature baby leave would be in addition to existing maternity and paternity pay provisions and would be around £160 a week.

There was also a budget commitment to consult on a new 'in-work entitlement' for employees with unpaid caring responsibilities, such as for a family member or a dependant.

Employment Law Updates

Carluccio's, the Insolvency Act and the job Retention Scheme

In situations where organisations become insolvent and enter administration, administrators normally have 14 days from their appointment to dismiss that organisations workers, to avoid liability for their employment and wages.

Due to the UK lockdown, the organisation Carluccio's entered administration. The administrators distributed letters to staff outlining that they could continue their employment by being furloughed and therefore benefit from the government Coronavirus Job Retention Scheme. Most staff contacted accepted this change, several asked to be made redundant and crucially 77 did not respond.

The administrators wanted to retain staff as much as possible and avoid redundancies, however they were unsure if they could apply the scheme to the 77 who had not responded. In the absence of specific government guidance on this situation they sought further clarity from the High Court.

The High Court assessed the situation and held that:

- There had been an effective variation of contract for those who had agreed to the change. This meant the administrators were not liable for any salary wages that exceeded the grant.
- For the staff that had failed to respond, there had not been an effective variation. Applying the *Abrahall* ruling, the Court explained the only conduct which could suggest an inferred agreement was that they had failed to respond. This alone did not satisfy the court that

agreement could be inferred, they had not continued to work as there was no work and had simply not responded. In forming their decision the Court considered various factors, the letter did not state failing to respond would be taken as consent, only a short time had passed since the letters were sent and there may have been a legitimate reason for people not wanting to be furloughed, especially as some of those contacted had opted for redundancy.

- Taking into account those that had not responded, the Court outlined it was in the best interest of the administrators to extend the 14-day period.

Employer note

This judgement serves as useful guidance for organisations who may be about to enter administration. It outlines ways in which administrators can work to avoid confusion when seeking agreements from staff to be furloughed. When issuing letters, it should state in clear terms that failure to respond will result in it being inferred that they have automatically agreed to furlough. It is also a good idea to put in place read receipts or use recorded post as confirmation that letters have actually been received.

The longer it takes for staff to agree to the changes, the more likely it is that their agreement will be inferred. That said, if some of their colleagues do refuse, it may be that they too may have viable reasons for their refusal that should be taken into account.

Hairdresser wins £20k after being asked to pick up dog excrement

The claimant commenced employment at Dads and Lads Barbers in Colwyn Bay in August 2016, where she worked regularly until February 2017 when she went off on long-term sickness absence for depression and anxiety before being dismissed in July 2018.

The claimant stated that the salon owner and her daughter discriminated against her, after learning the claimant who is of Greek and Yemeni background described herself as Muslim in the presence of her colleagues. Following that disclosure the claimant says she was treated unfavourably; on two occasions her shifts were altered so that she had to remove rubbish from the salon and clean up dog excrement from the car park, she was given shorter notice than usual of her shifts, she was not paid holiday pay accrued during her sickness absence and had been filmed by colleagues as she walked by which she stated exacerbated her condition.

The claimant stated her manager had become more distant and less talkative with her and then told her that a customer, a boy, had made an anonymous allegation of improper conduct against her. It was later established by the tribunal that the allegations could have related to another member of staff.

The Court judgement read that in the absence of any contrary evidence they found on the balance of probabilities that the direction to take out the rubbish and clean up the dog excrement were acts of discrimination on the grounds of perceived religion.

The claimant was awarded £1,000 for unlawful deduction from wages in respect of accrued holiday and £357 for failing to provide a written statement of employment particulars. According to Judge Richard Powell, her claims of unfavourable treatment for being videoed whilst on sick leave, religious discrimination for being directed to take out rubbish from the salon and clean up dog faeces and for making an allegation of impropriety with a minor were well founded. He added that ‘the

discriminatory conduct of the respondent led to the respondent's disability, her extended sickness absence, her continued ill health and aggravated an existing mental health vulnerability. The respondent was ordered to pay the gross sum of £19, 352.00 in respect on injury to feelings and interest.