

HOTSPOTS

September 2012

Employment Tribunals - Fees to be Introduced

The Ministry of Justice has published the results of its consultation on the introduction of fees in employment tribunals. The changes are intended to be implemented in the summer of next year. The purpose of introducing fees appears to be to lower the cost of the employment tribunal system to the taxpayer by potentially removing many of the unfounded, purely speculative claims.

The fees will be as follows:-

- level 1 claims (the very straightforward ones such as unlawful deductions) - £160 issue fee; £230 hearing fee;
- level 2 claims (pretty much everything else) - £250 issue fee; £950 hearing fee;
- Employment Appeal Tribunal - £400 appeal fee; £1,200 hearing fee;
- there are several other fees, such as for an application to dismiss following settlement and £600 for judicial mediation.

The response paper states, quite openly, that the fees will not cover the actual cost of running the employment tribunal system and the government is committed to reviewing the fee structure once it is implemented.

Sickness and Annual Leave

The European Court has held in a recent case that a worker who is sick during annual leave can take this leave at a later date.

The rationale for this decision is that, according to a European Directive, a worker is entitled to four weeks annual paid leave each year. The Court considered the fact that annual leave and sick leave have different purposes, and that the right to annual leave cannot be interpreted restrictively.

A worker who is on sick leave during scheduled annual leave has the right to take annual leave at a different time. It was held that it would be contrary to the purpose of annual leave to grant the right only if the worker was already unfit for work when the period of annual leave commenced.

‘Pool of One’ in Redundancy Selection

A recent case has highlighted the importance of employers putting their minds to whether there should be an extended pool for redundancy rather than simply deciding, without enquiry, that employees who are the only workers of a particular type or performing a particular redundant function should be made redundant. Employers should think about whether there could or should be a wider pool, beyond the role at risk.

Managing Redundancy for Pregnant Employees & Those on Maternity Leave

Employers should take particular care when considering making pregnant employees or those on maternity leave redundant.

The beginning of pregnancy to the end of maternity leave is, by law, a 'protected period' during which a woman is entitled to special consideration, if this is necessary, to make good any disadvantage she may otherwise experience.

Acas, in partnership with the Equality and Human Rights Commission, have produced a useful checklist for managing the process fairly, summarised as follows:-

- Identify whether and why there is a **redundancy situation**;
- **Consult any Trade Union** (if there is one) **and employees**, including those on maternity leave or who are absent with pregnancy-related sickness;
- Identify **relevant employees** likely to be affected by the redundancy (may not be limited to the exact same work or grade);
- Draw up **criteria for selecting people for redundancy** which are relevant to the job going forward, transparent, objective and capable of measurement;
- Identify **who in your business** will select those potentially redundant. The person should make him/herself familiar with the work, experience, qualifications and skills of all affected employees; ensure that the employees who are absent due to pregnancy are properly considered and that a woman on maternity leave would not be disadvantaged by the criteria;
- **Consult all affected employees** about the redundancy criteria and how they have been assessed according to them so they can correct any mistakes; ensure women on maternity leave are consulted;
- Ensure that there is fair procedure for considering **suitable alternative work** – women on maternity leave should have preference over other workers. Ensure that there is awareness of qualifications, skills, abilities etc. If a woman is asked to attend a meeting during maternity leave, ensure that she is not disadvantaged e.g. by being unaware of any developments at work;
- Ensure that you have a fair and transparent way of dealing with any **appeal**. Involve a more senior manager if you can to consider individual grievances and any subsequent remedies. This may allow complaints about selection for redundancy to be resolved locally and help reduce the likelihood of complaints to employment tribunals.

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For further information on these or other legal issues please contact either Alistair Duncan in our Dundee Office on (01382) 200000 or James Andrew in our Perth Office on (01738) 637311.

These comments are provided for guidance only. Each situation must be looked at in its own right so you cannot rely on these points in relation to any particular matter without first taking specific advice.

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