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Employment Law Update

- Some case law updates
 - ♦ Employment Status
 - ♦ Holiday Pay
 - ♦ Dress Codes
 - ♦ Work Place Stress
 - ♦ Long term sickness absence
 - ♦ Final Written Warnings
 - ♦ Sleep-in shifts and the NMW
- Legislation Update including:
 - ♦ Apprenticeship Levy
 - ♦ Employment Tribunals
 - ♦ Gender Pay Reporting Regulations
 - ♦ Code of Practice for Ethical Employment
 - ♦ Trade Union Act 2016
 - ♦ Employing foreign workers
 - ♦ GDPR
 - ♦ Financial Bits and Pieces

Employment Status

- Aslam, Farrar & Others v Uber
 - ♦ Employment Tribunal
 - ♦ 'self-employed'
 - ♦ Decision: worker
 - ♦ Uber have appealed this first instance decision so watch this space
- Pimlico Plumbers Ltd & Anor v Smith
 - ♦ Court of Appeal
 - ♦ 'independent contractor'
 - ♦ Decision: worker
- BEIS Review – published on 9 February 2017
- Taylor Review – due June 2017



Holiday pay

British Gas Trading Ltd v Lock and another

- Commission payments and holiday pay
- October 2016 – CA upheld EAT and ET decision - commission should be included in holiday pay calculations
- February 2017 – British Gas were refused permission to appeal to Supreme Court
- Case will return to ET



Dress Codes

Achbita and anor v G4S Secure Solutions NV (Case C-157/15) / Bougnaoui and anor v Micropole SA (Case C-188/15)

- ECJ decision
- Wearing of headscarves
- Not directly discriminatory on the ground of religion or belief
- But could be indirect discrimination



Workplace Stress

Herry v Dudley Metropolitan Council and Herry v Dudley Metropolitan Council and the Governing Body of Hillcrest School

- Stress was a reaction to life events (ongoing grievances) and did not derive from a mental impairment.
- EAT – ET not bound to find that Mr Herry was disabled because he had been certified as unfit for work by reason of stress for a long period.



Long Term Sickness Absence

O'Brien v Bolton St Catherine's Academy [2017]
EWCA Civ 145

- Dismissal of employee on long-term sick can be a potentially fair reason for dismissal.
- CA gave useful guidance for employers:
 - ♦ Ascertain medical position at all stages of the sickness management process
 - ♦ Keep a record showing the full impact of continuing absence on the organisation and its staff
 - ♦ Review all medical evidence produced during the absence period including any new evidence

Sleep-in shifts and the NMW

Focus Care Agency v Roberts UKEAT/0143/16

- EAT considered whether night shift workers who sleep in are carrying out work for NMW purposes
- EAT concluded that a 'multifactorial' approach is required
- EAT identified **four** potentially relevant factors in deciding whether sleep-in shifts count as "time work" for NMW purposes
- **But**....essentially up to ET in each case to reach a decision based on the individual facts
- What if carers are paid at a lower rate for sleep over shifts than they receive for day shifts?

Apprenticeship Levy

- 6 April 2017
- Employers with an annual payroll of more than £3 million
- 0.5% levy payable on total bill
- An allowance of up to £15,000 for eligible employers
- What about Wales?



Employment Tribunals

- Fees
 - ♦ MOJ Review - published in January 2017
 - Fees regime is working well
 - Proposes some very limited reforms
 - No evidence of direct or indirect discrimination
- R (on the application of UNISON) v Lord Chancellor - Unison challenged government's tribunal fee policy in the Supreme Court (heard on 27 & 28 March).
- The Future? We'll have to wait a while for the verdict but when it comes it could have a huge effect !
- BEIS and MOJ joint review – published in December 2016
- Publication of Employment Tribunal decisions
- Live searchable data base - concern re adverse publicity?

Gender Pay Gap Reporting

- Came into force on 6 April 2017
- Private and third sector employers (and public sector in England) with 250+ employees will have to publish gender pay information on a mandatory basis
- HA's will fall within the scope of the regulations
- Based on a "snap shot" each year – 5 April
- Within 12 months, required to publish 6 bits of information on website and in Government League Table
- Tricky bits:
 - ♦ Who counts as an employee
 - ♦ What counts as pay and what counts as bonus pay
 - ♦ People who are off sick or on maternity leave / paternity leave
- Who cares?



Code of Practice for Ethical Employment

- A new Code of Practice for Ethical Employment in Supply Chains in the Welsh public sector
- Businesses and third sector organisations in receipt of Welsh public sector funding will be expected to sign up to the code. Others encouraged to sign up.
- Six key subjects including:
 - ◆ Modern Slavery
 - ◆ Blacklisting
 - ◆ Zero hours contracts
 - ◆ Umbrella Schemes
 - ◆ False self-employment
 - ◆ Living Wage
- 12 commitments



Trade Union Act 2016 (TU Act)

- Main provisions of the TU Act were brought into force on 1 March 2017.
- Higher ballot thresholds came into force
- Introduction of minimum turnouts:
 - ♦ 50% voting threshold
 - ♦ Additional 40% for “important public services”
- Notice of a strike action to be given to an employer – 14 days
- Wales?



Employing foreign workers

- Came into force on 6 April 2017
- Immigration skills charge due to be implemented
- Employers sponsoring non-EEA – Tier 2 Visa
- £1,000 per employee per year (£364 for smaller, charitable organisations)
- Minimum salary threshold will rise to £35,000



General Data Protection Regulation (GDPR)

- UK implementing GDPR in May 2018 despite Brexit
- Instantly in force as a Regulation not a Directive
- Largely similar to current DPA and a restatement of existing position
- BUT introduces new obligations on data controllers **and** data processors
- Increased sanctions:
 - ♦ **£10m Euros** – consent; security; DPO lapse
 - ♦ **£20m Euros** – basic principles; individuals' rights; overseas transfers; non compliance with an ICO order
- Recommendation that controllers and processors start their preparations now!



National Minimum Wage and National Living Wage

From 1 April 2017:

Age	Rate from 1 April 2017
25+	£7.50
21+	£7.05
18-20	£5.60
16-17	£4.05

←
National Living
Wage



The maximum £20,000 financial penalty to apply in respect of **each underpaid worker**, rather than to each employer!

Employers who fail to pay will be banned from being a company director for up to 15 years.

Increase in Statutory Rates of Pay

Family Payments	From 6 April 2017
Statutory Shared Parental Pay <i>Statutory rate or 90% of weekly earnings (whichever is lower)</i>	£140.98
Statutory Maternity Pay <i>90% of employee's average weekly earning for first 6 weeks. Remaining weeks at statutory rate or 90% of weekly earnings (whichever is lower)</i>	£140.98
Statutory Adoption Pay <i>90% of employee's average weekly earning for first 6 weeks. Remaining weeks at statutory rate or 90% of weekly earnings (whichever is lower)</i>	£140.98
Statutory Paternity Pay <i>Statutory rate or 90% of weekly earnings (whichever is lower)</i>	£140.98
Sick pay	From 6 April 2017
Statutory Sick Pay	£89.35

Compensation Limits

Payments	From 6 April 2017
Limit on a week's pay for calculating redundancy and unfair dismissal	£489
Maximum basic award for unfair dismissal and statutory redundancy payment (30 weeks' pay)	£14,760
Maximum compensatory award for unfair dismissal	£80,541
Minimum compensation for employees excluded/expelled from trade union	£9,118
Contract claims brought in an employment tribunal	£25,000

Any questions?



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