SAUNDERS ROBERTS SR SOLICITORS

EMPLOYMENT UPDATE

June 2008

Religious Discrimination

A tribunal has held that an instruction to unlawfully discriminate was discrimination in its own right.

A manager of a Christian charity who was ordered only to employ Christians and not to promote existing non-Christian employees resigned with stress after implementation of the policy caused staff complaints.

The employers Genuine Occupational Requirement defence failed because it was disproportionate and no job evaluation was carried out.

Successor Comparators?

The Employment Appeal Tribunal has held than a female pursuing an equal pay claim could not use her male successor's salary as a comparator.

She had to compare herself with male comparators employed at the same time. There was no scope for the use of hypothetical comparators.

Illegal Worker Fines

Action has been taken against 137 businesses in the first 80 days following the imposition of the new strict regime on employers who recruit or continue to employ workers not authorised to work in the UK.

The stringent provisions were introduced on 29th February this year under the Immigration Asylum and Nationality Act 2006.

According to figures released by the Home Office, only 11 prosecutions were successful last year. Employers should be vigilant to ensure that effective and reliable systems are set up and that staff receive adequate training to ensure that all employees are entitled to work in the UK.

Casual Worker or Full Time Employee

Most organisations benefit from the flexibility of employing casual workers. However, tribunals are increasingly finding that individual periods of employment exist under 'umbrella' contracts. When relations sour, these casual staff are then able to bring unfair dismissal claims under their 'umbrella' contract.

In one recent case, a casual bindery assistant was offered regular work from 1998 onwards. Although she often agreed to work, occasionally she was unable or unwilling to do so. She would notify her employer in advance if she was off sick or on holiday.

The evidence suggested that the employer valued the more experienced casual workers skills and made an effort to provide them with ongoing work. The Claimant also worked most weeks and the longest period of absence from work for her was for a 12 week period of sickness leave.

The Employment Appeal Tribunal held that the Claimant had an expectation of being given work resulting from a practice over a period of time. This was despite the fact that the EAT also found that there was no obligation to provide any minimum amount of work.

All such cases tend to turn on their facts but employers need to be aware of the Tribunal's increasing propensity to impose 'umbrella' contracts on to what may have previously been relationships of goodwill, convenience or mutual benefit.

Compromise Agreement Decision Favours Employers?

In the case of Collidge v Freeport Plc it has been held that an employee was not entitled to be paid under the terms of a compromise agreement on termination of his employment. However, he still had to uphold all of the other terms in the agreement protecting the employer including the provisions which prevented the employer from bringing any other statutory or contractual claim against the employer.

The agreement contained a term that the employee would not receive payment if any serious breaches of his employment contract came to light entitling the company to bring his contract to an end in any event. Before making payment, the company found evidence that the employee had been making improper expenses claims and other allegations which were sufficiently serious to warrant gross misconduct.

Such clauses now appear in all well drafted compromise agreements and provide an important protection for businesses against errant employees. However, they are most effective if any allegations come to light before any payment is made to the employee so that it can be stopped. Recovering such money after payment is more difficult.

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