

EMPLOYMENT UPDATE

March 2009

Disability Claim Time Limits

If an employer decides not to make a reasonable adjustment to a disabled person's working environment then the employee normally has 3 months in which to bring a claim. However, what if no decision is made regarding reasonable adjustments?

The Court of Appeal has held that in such circumstances the employee has 3 months to claim from when the employer might reasonably have been expected to make the reasonable adjustment.

Flea Bite Dismissal

An employee at a holiday camp who was allegedly dismissed by reason of redundancy was actually dismissed after raising health and safety concerns after suffering from infected bites from rat fleas which infested her chalet accommodation.

The employee settled out of court for an undisclosed sum.

Unequal Pay Not Discrimination

A group of predominantly female employees (carers) were not discriminated against on equal pay grounds when they were paid less than a group of predominantly male employees (street cleaners and gardeners) even though their respective job roles were rated as "equivalent" in equal pay terms.

The EAT held that the pay difference was due to a genuine productivity bonus which, whilst wholly appropriate for street cleaners and gardeners, would have been inappropriate for the group of carer employees. The decision was not therefore 'tainted' by discrimination and did not require further objective justification.

Unfair Dismissal and Final Salary Pension Schemes

The Employment Appeal Tribunal ("EAT") has held that the loss of a final salary pension benefit can be an entirely separate head of claim in unfair dismissal proceedings.

The Claimant, Ms Roberts, was employed by Aegon UK Corporate Services ("Aegon"). She left claiming unfair dismissal and immediately obtained a position with a new company on a higher salary.

She had no right to claim a compensatory award in unfair dismissal proceedings as she had worked in her new position for 8 months. However, the new employer only had a "money purchase" pension scheme. Ms Roberts therefore claimed compensation for the loss of her final salary pension benefit.

The EAT accepted her claim stating that a final salary pension benefit was a "special kind" of benefit and that her new employment did not necessarily bring the benefit of the final salary pension scheme to an end.

The original tribunal had correctly calculated the loss of the final salary pension benefit and then set it against "any credits arising from any employment over and above the Aegon level of earnings together with an appropriate level of employer's contributions."

The case will be more bad news for employers who still have final salary pension schemes.

Inappropriate 'Proselysation' - Not Discrimination

The EAT has held that Liverpool City Council did not unlawfully discriminate against a carer employee, Mr Chondol, when he was dismissed for promoting his Christian faith by asking a vulnerable service user whether he believed in God and went to church.

The EAT drew a clear distinction between an employee possessing and practising religious beliefs (which was wholly permissible) and the attempted and inappropriate conversion of others to those beliefs (which was, in this case, deemed wholly inappropriate).

Racial 'Slur' Held to be Harassment

The Clinical Director of a pharmaceutical company was found to have racially harassed a Clinical Projects Manager of Indian ethnicity when he said "We will probably bump into each other in future, unless you are married off in India." Whilst there was some evidence of previous inappropriate comments by the Clinical Director, the EAT held that harassment under the Race Relations Act 1976 (as amended) could arise from a single incident (as opposed to harassment under the Protection from Harassment Act 1997 where a course of conduct involving at least two incidents of harassment is required).

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