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Comment: Employment law 2015 round-up

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As ever, if you employ staff, knowing employment law is vital.

Making sure the up to date HR and employment law approaches are taken is a difficult task given the fast paced changes in this area.

As 2015 ends, it may be useful to reflect on some of the main changes that happened over the year.

* Shared parental leave was introduced in April 2015. There seems to have been little take-up so far from employees, but employers should not underestimate the potential impact of these hugely complex Regulations.

Make sure you have the necessary procedures in place and are aware of the difficult legal provisions in relation to the timing of notices and counter notices, and when you can or can't refuse an application for share leave.

On the horizon: grandparents' leave is the latest "family friendly" provision likely to be introduced. Are staff aware of the position and are your managers equipped to deal with any requests that arise?

* Employers who employ staff on "zero hours" contracts are now prohibited from using "exclusivity clauses" stating that the individual cannot work elsewhere. If you use such staff, you should review your paperwork.

The government also issued helpful guidance on zero hours contracts in October 2015. Gone are the days of all staff being on permanent 9 to 5 contracts and instead employers utilise a plethora of contractual arrangements.

* The Government has acted to limit the impact of recent decisions on holiday pay (stating that workers should be paid holiday pay which includes average overtime, commission and other payments regularly made by the employer, for at least 4 weeks per year).

For claims raised after July 2015, the claim can only include a maximum 2 years of past underpayments.

Also, a decision in Northern Ireland supports the view that voluntary (and not just compulsory) overtime should be included in holiday pay.

This remains a high-profile area with thousands of claims pending at the Employment Tribunal.

* A decision of the European Court of Justice is important for employers who employ "peripatetic staff" i.e. staff with no work base.

Travel time from home to the first customer of the day, and back home from the last customer, could well amount to "working time" in many cases.

While this does not necessarily mean that workers are entitled to be paid for this time, this impacts on the 48 hour week and the entitlement to daily and weekly rest breaks.

* The ACAS Code of Practice on disciplinary and grievance matters has been amended to state that where an employee reasonably asks to be accompanied at a disciplinary/grievance meeting, there is no limit on who can be chosen (as long as it is a colleague or Union rep).

The employer can no longer refuse a particular companion on grounds that they would be disruptive or are too involved in the subject matter.

Failure to comply with the Code could potentially result in a dismissal being found unfair, with significant financial consequences.

* It is now unlawful for an employer to insist that an applicant or employee makes a Subject Access Request to obtain their criminal record, rather than carry out the normal disclosure checks to obtain details of unspent convictions.

Court and Tribunal decisions in the course of the year have decided that:

- In considering whether the need for collective redundancy consultation is triggered, you do not need to look at the whole business, but rather the redundancies planned in "one business unit".

- Employees who cannot take their annual leave due to illness should be able to carry the entitlement forward, but this will expire 18 months after the end of the relevant holiday year. The "use it or lose it" mantra still has some relevance but care is needed.

- For a disclosure to be "protected" for whistleblowing purposes, it needs to be in the public interest, but that could include something that affects a very small part of the public – such as all the managers of the employer's business. Have you a whistleblowing policy that deals with these issues?

- It is legitimate for HR to assist managers in carrying out disciplinary processes, but this should be limited to advice about procedure. Where the decision as to guilt and/or penalty is taken by HR, not the disciplinary chair, this could mean the dismissal is unfair.

As ever employment law never stands still.

In 2016 there are likely to be further changes, including in relation to the living wage, the detail around trade union/industrial action and balloting to name but a few.