

hot news

July 2010

Publication of employment tribunal statistics for 2009-2010

The Employment Tribunal Annual Statistics for 2009/10 have been published revealing a 56% increase from 2008/09 in the number of claims accepted by Employment Tribunals.

The statistics show a 17% increase in the number of tribunal claims associated with unfair dismissal, breach of contract and redundancy (an unsurprising consequence of the recent economic downturn). The results also show a growing backlog of Tribunal cases with more than 400,000 claims currently outstanding.

The CIPD leads calls for a minimum wage for interns

In its recent paper "Internships: To Pay or not To Pay?" the CIPD has suggested the introduction of a £2.50 an hour minimum 'training wage' after finding that a third (37%) of internships are currently unpaid. The CIPD believes that the proposed 'Training Wage' would not only help reflect the contribution of interns to an organisation but promote social mobility by encouraging people from poorer backgrounds to apply. The suggested training wage would match the current minimum rate of pay for apprentices.

Public sector unions threaten strikes following pay freeze decision

Public sector unions have stated that they are now "at war" with government ministers and are threatening nationwide strikes after it was announced that a two-year public sector pay freeze would affect previously "insulated" public sector workers and that public sector

workers' gold-plated pensions would also be targeted for cuts. Mark Serwotka, general secretary of the Public and Commercial Services Union has said that the "only question is when that action will start."

Government to 'cap' number of migrant workers entering the UK

The government has announced that it intends to carry out a 12 week consultation with businesses regarding the introduction of a limit on the number of non-EU migrants coming to work in the United Kingdom. Subject to the outcome of the consultation it aims to put this limit in place by 1 April 2011.

J v DLA Piper UK LLP – Employment Appeal Tribunal (EAT)

The EAT has provided useful guidance regarding the weight to be given to a GP's report as opposed to that of a relevant "expert" when determining whether the claimant suffers from a disability.

J had a history of depression from 2005, including a period when she was certified unfit for work in December 2005. The respondent (DLA) offered her a job in June 2008 subject to completion of a medical questionnaire. J disclosed her history of depression in this form and, a few days later, DLA withdrew the offer blaming a recruitment freeze. J believed that the true reason was her medical history and brought proceedings under the Disability Discrimination Act 1995 ("DDA").

The medical reports before the Employment Tribunal included reports from J's general practitioner and a psychiatrist instructed by DLA. The GP's report



suggested that J was disabled within the meaning of the DDA, whilst the psychiatrist's report was inconclusive. The Employment Tribunal found that there was no conclusive expert evidence regarding J's condition and held that she was not disabled within the meaning of the DDA.

J appealed on the basis that the tribunal should have considered her GP's report. In the alternative, J raised the interesting argument that she did not in any event need to prove that she was actually disabled as DLA had discriminated against her based on its perception that she was disabled, which (J claimed) should be covered by the DDA.

The EAT allowed J's appeal on the first point, holding that the Employment Tribunal had failed to take into account evidence from J's GP. The EAT noted that although an Employment Tribunal is entitled to give more weight to specialist evidence, it should not have ignored evidence from a GP who was familiar with J, when the specialist, who had not seen her, gave evidence that was inconclusive.

The EAT noted that the "perception argument" had not been raised before the Employment Tribunal originally and therefore refused to allow it to be raised for the first time on appeal. This allowed the EAT to "sidestep" determination of the issue. The EAT did, however, note the potential problems that would inevitably be involved in establishing what the alleged discriminator perceived to be the claimant's condition and whether this actually amounted to a disability.

The matter has, however, been further considered by the EAT as set out below.

Aitken v Commissioner of Police of the Metropolis

In this case the EAT held that treatment on the basis of a mistaken perception that an employee is suffering from a particular disability does not fall within the definition of direct disability or disability-related discrimination for the purposes of the DDA.

The particular facts of the case involved a police officer who suffered from Obsessive Compulsive Disorder. He argued that the pertinent provision of the DDA should be interpreted to include discrimination on the grounds of perceived disability.

The EAT disagreed. It found that the case was not one in which the respondent had acted on the basis of an assumption that the claimant had a dangerous mental illness and that the respondent had instead acted on the basis of how the claimant presented himself. The EAT went on to hold that the pertinent provision of the DDA which includes reference to "...the disabled person's disability" is distinguishable from those used in other discrimination statutes which do not necessarily relate the relevant characteristic to the complainant. Consequently, the EAT confirmed that the DDA does require an actual (as opposed to perceived) disability.

Implementation of the Equality Act 2010

The first wave of implementation of the Equality Act will go ahead to the planned October 2010 timetable following the publication of the first commencement order in Parliament. The act, which will consolidate existing discrimination legislation, also contains landmark provisions designed to protect disabled people from discrimination and tackle the gender pay gap.

Theresa May, the Home Secretary and Minister for Women and Equalities has stated that:

"Implementing the Equality Act to the planned timetable makes clear our commitment to equality. A successful economy needs the full participation of all its citizens and we are committed to implementing the act in the best way for business."

Additional information

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