

August 2009

Employment Law Newsletter

The Effective Date of Termination

The effective date of termination is when an employee reads the summary dismissal letter or is told in person and not the date when the letter was written, posted or delivered. This has been confirmed by the Court of Appeal in *Gisda Cyf v Barratt [2009] EWCA Civ 648*.

This confirms the earlier

decision in *Brown v Southall and Knight [1980] ICR 617* which stated the well-established doctrine that the decision to terminate employment is only effective when communicated.

The Court of Appeal's decision in *Gisda* is important as it may affect whether an employee's

claim for unfair dismissal against their employers in the employment tribunal is within the statutory time limit of 3 months from the effective date of termination (EDT).

Section 97(1) of the 1996 Act states that the EDT is:-

(a) In relation to an employee whose contract

of employment is terminated by notice, whether given by his employer or by the employee, it means the date on which the notice expires;

(b) In relation to an employee whose contract is terminated without notice, it means the date on which the termination takes effect.

The Retirement Age

The Government strategy document, "Building a society for all ages," has stated that it intends to review the default retirement age in 2010 and

not in 2011 due to a "change in economic circumstances" and calls from the National Council for Ageing who have brought a judicial review action in an attempt to have the default retirement age abolished.

Under the Employment Equality (Age) Regulations 2006 the default retirement age is 65. The Regulations

state that an employer may fairly dismiss an employee who is over 65 by reason of retirement as long as it applies the Right to Request to work beyond 65 procedure.

Retirement age (ie. The age at which it is fair for an employer to terminate the employment of an employee, subject to the Right to Request

procedure), should not be confused with the age at which state pension will be paid, which is currently 60 for women and 65 for men.

This is a very topical subject as speculation is that the state pension age will have to increase to 68, then 70, in order to cope with the pension time bomb.

Future Seminars

6 October

Update on topical employment law issues.

Including:

- disciplinary and dismissal procedures
- grievances
- the new ACAS Code
- redundancies
- the Equality Bill

24 November

Subject to be decided.

Belief in climate change can be a "philosophical belief"

A person's belief that carbon emission must be cut to avoid the catastrophic consequences of climate change could amount to a philosophical belief for the purposes of the Employment Equality (Religion or Belief)

Regulations 2003. This has been confirmed by the Employment Tribunal in *Nicholson v Grainger Plc*.

Under the 2003 Regulations, it is unlawful to discriminate against a person on the ground of his

or her religion or belief. However, *Nicholson v Grainger Plc* now shows that belief is not just confined to religious belief but can also include philosophical belief.

Guidance on controlling shareholders' employment status

A shareholder or director of a company can also be an employee and therefore entitled to make a claim on the National Insurance Fund in respect of debts, such as arrears of pay, owed by the company if that company is wound up. This rule even applies if the claimant's

shareholding gave him or her total control of the company or if the claimant made loans to the company or guaranteed its obligations. This has been confirmed by the Court of Appeal in *Secretary of State for Business, Enterprise and Regulatory Reform v Neufeld and Howe*.

The Gender Pay Gap

The Equal Pay Act 1970 was introduced when it was common for employers to pay men and women different amounts of pay or to award higher paid jobs to men. Although such direct discrimination is less common today, it does still exist.

Work Commission, which was set up to review the gender pay gap and other employment issues relating to women, has stated that the gender pay gap is getting wider.

In terms of national statistics, Annual Survey of Hours and Earnings statistics, which are

A report from the Women and

The Equality Bill

This will become very topical over the next 12 months. One of the main aims of the Equality Bill, which is expected to become law in the form of the Equality Act in the Autumn of 2010, is to consolidate all types of discrimination law in one piece of legislation, treating each of the following

protected characteristics consistently; sex, age, race, disability, sexual orientation, religion or belief, gender reassignment, pregnancy and maternity, and marriage and civil partnership. This will hopefully make discrimination law simpler and easier to understand for both employers and employees.

based on a sample of employee jobs taken from 146,000 HM Revenue and Customs records, found that the gender pay gap was 12.8% in 2008 which had slightly increased from 12.5% in 2007 when it was reported to be the lowest since records began.

The mean hourly rate for men increased by 4.4% to £12.50 whilst the mean hourly rate for women increased by the slightly lower figure of 4.1% to £10.91.

ACAS statistics

The Tribunals Service's provisional Employment Tribunal Statistics for the period from 1st April 2008 to 28th February 2009 state that the final figures will, when they are available, show that:-

- There were 131,365 tribunal claims in the first 11 months of 2008/09 which is a 24% decrease on 2007/08.
- There were substantial increases in claims that follow a redundancy dismissal: unfair dismissal (up 26%), breach of contract (25%), redundancy pay (38%), failure to inform and consult on redundancy (80%) and age discrimination (27%).
- There were substantial decreases in claims for sex discrimination (30%) and equal pay (26%).

The National Minimum Wage

From 1st October 2009, the national minimum wage will be:-

- Standard (adult) rate – £5.80 (rising from £5.73)
- Development rate - £4.83 (rising from £4.77)
- Young workers rate - £3.57 (from £3.53)

A week's pay for statutory redundancy calculations

As announced in the spring budget, the Government is introducing a "one off" increase in the week's pay figure from £350 to £380 from 1st October 2009. It is likely to increase again in February 2010.

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