

NEWS ROUND UP

SALARY MISTAKE

- *Keenan v Barclays Bank Plc*

An employment tribunal held that an employer who mistakenly paid a part-time employee at a rate intended for a full-time person in that role was bound to continue paying the employee at the full-time rate since the employee had no actual knowledge that a mistake had been made. The case though alarming for employers did arise out of a particular set of facts.

Mrs K TUPE transferred to Barclays. There was an expectation amongst employees at the time of the transfer that their salaries would increase. Mrs K's salary on transfer went up by more than £10,000. Mrs K thought this was simply her overdue pay rise. Barclays had a number of chances to query her salary e.g. when then made a staff loan, and when paying her bonus but they never did. The tribunal concluded that Mrs K did not actually know that an error had been made and therefore she was entitled to salary at the higher rate as part of her terms of employment.

PRE-EMPLOYMENT MEDICAL QUESTIONNAIRE

- *Cheltenham Borough Council v Laird*

In the highly publicised case of *Cheltenham Borough Council v Laird* the High Court rejected the council's claim that a former senior employee had made fraudulent and negligent misrepresentations when she had failed to mention her history of stress and depression in a pre-employment medical questionnaire. The council had argued that it had entered into her contract of employment on the strength of the representations in her medical questionnaire.

The court said that the employee had answered each of the questions she was asked truthfully and her answers were neither false nor misleading. On this basis no misrepresentation took place and the council could not recover damages.

It was common ground that the questionnaire was not well drafted and that the questions were open to misinterpretation. It is therefore still possible that an employer might take a successful legal action against an employee who has given false answers to a pre-employment medical screening questionnaire. An employer who is faced, however, with an employee who has revealed a serious medical condition will need to consider its obligations under the Disability Discrimination Act, before attempting to withdraw any job offer.

LONG TERM SICK LEAVE - PAID ANNUAL LEAVE

- *HM Revenue & Customs v Stringer and others*

The House of Lords held that employees on long-term sick leave are able to take paid annual leave even though they are not at work. Under the Working Time Regulations employees are entitled to 28 days paid annual leave and it is not possible to carry the leave forward from one holiday year to the next. Failure to pay holiday pay could be brought as a wrongful deduction from wages claim. A claim for unlawful deduction from wages can be brought within three months of the last in a series of deductions, potentially allowing a claim to go back more than three months if the non-payment forms part of a series. Incidentally it has been suggested that the amount of money in dispute in this case, is the princely sum of £16.14, which would buy about 3 minutes worth of legal advice!

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CRITERIA FOR REDUNDANCY SELECTION - LENGTH OF SERVICE

• *Rolls-Royce Plc v Unite the Union*

The Court of Appeal determined that using length of service as part of the criteria for redundancy selection was lawful even though it constituted indirect age discrimination (older employees were more likely to have greater service than their younger colleagues). The court took the view that it was objectively justified (and thus defensible) as the aim was to maintain a stable workforce during a redundancy exercise and reward loyalty.

INCREASE TO REDUNDANCY PAYMENTS

The weekly limit used to calculate statutory redundancy pay will increase from £350 to £380 with effect from 1 October 2009 resulting in a maximum payment of £11,400.

DEATH OF THE STATUTORY DISCIPLINARY DISMISSAL AND GRIEVANCE PROCEDURES

The hugely unpopular statutory disciplinary dismissal and grievance procedures have been scrapped with effect from 5 April. Instead employers and employees are now expected to follow the ACAS Code of practice for Disciplinary and Grievance Procedures. Failure by the employer or the employee to comply with the Code, gives the tribunal discretion to adjust an award up or down by 25%. The Code does not, however, apply to redundancy dismissals.

This article offers general guidance, it reflects the law as at October 2009. The circumstances of each case vary and this article should not be relied upon in place of specific legal advice.

SWINE 'FLU' (AGAIN)

The plans to allow people with suspected swine 'flu' to extend the amount of time they can take off work without a doctor's note from 7 to 14 days are currently under review and would be enacted for a limited period of time if the number of cases in the UK rose dramatically.

RETIREMENT AGES

The plans are under ongoing review by the government's Civil Contingency Committee, with draft regulations ready to lay before Parliament. The regulations would only remain in force for six months unless it was agreed that they needed to be extended.

RETIREMENT DATE

The government has announced that its review of the default retirement age of 65, which had originally been planned for 2011, will be brought forward to 2010.

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