



GOVERNMENT MAKES IT MORE DIFFICULT TO BRING CLAIMS

The Government has announced that the qualifying period for the right to claim unfair dismissal will be extended from one to two years on 6 April 2012. It says that the new qualifying period should see the number of unfair dismissal claims drop by around 2,000 per year.

The Government also proposes to introduce an upfront fee for claimants to lodge a claim in the Tribunal and a further £1,000 when a hearing is listed. Commenting on the news, **Tony Hyams-Parish, Head of Employment at Rawlison Butler LLP**, said "It remains to be seen whether, in reality, the 'two year rule' will reduce the number of unfair dismissal claims. Most unfair dismissal claims these days include some form of discrimination claim and they need no length of service. As regards fees, if they deter claimants from bringing hopeless claims, that will come as a welcome relief to employers".

TEST YOUR KNOWLEDGE

How much service does an employee need in order to make a flexible working application under the Flexible Working Regulations? (Answer on back page)

IN THIS ISSUE.....

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NEW PARTNER JOINS EMPLOYMENT TEAM



We are pleased to announce that Brian Palmer has joined the highly rated Employment Team at Rawlison Butler LLP as a Partner. Brian joins Tony Hyams-Parish and his team from Fladgate LLP in London, where he was Head of Employment. With over 20 years' experience in the employment law field, Brian has worked with UK and international clients across a range of industries and in particular finance and insurance, legal and charities, as well as high net worth individuals and senior executives. Brian's extensive experience covers all areas of commercial employment law, both contentious and non-contentious. He has specialist experience in dealing with the protection of confidential information and critical teams of employees including the use of search and freezing injunctions. Brian can be contacted on +44(0)1293 558533 or by email at bpalmer@rawlisonbutler.com.



ARE YOU AFFECTED BY THE NEW AGENCY WORKERS REGS?

The Agency Workers Regulations 2010 came into force on 1 October 2011 and apply to agency workers who do temporary work through temporary work agencies. The Regulations provide that all agency workers must have access to 'collective facilities' and amenities (i.e. canteen, childcare, transport etc) where they work and have access to information about job vacancies from the first day of their assignment. Once they have completed 12 weeks' temporary work, agency workers are entitled to the same "basic working and employment conditions" that they would have been entitled to had they been recruited directly by the hirer. However, agency workers that enter into a permanent contract with a temporary work agency, under which they continue to be paid between assignments, do not benefit from the "equal treatment" provisions in the regulations.

This topic is included in our [Top 10 BIG Issues for Employers 2011](#) seminar (see back page).

EMPLOYERS QUESTIONS

Q: One of my staff was recently called a 'bin laden lookalike' by a customer which he took great offence to. I am now worried about a claim he may bring. What should I do?

A: This is something that does need to be treated seriously as under new laws introduced by the Equality Act ('EqA') 2010 employers can be liable for the harassment of staff by third parties. The EqA 2010 states that an employer will be treated as harassing an employee where (i) a third party harassed the employee in the course of the employee's employment (ii) the employer failed to take such steps as would have been reasonably practicable to prevent the third party from doing so; and (iii) the employer knew that the employee had been harassed in the course of their employment on at least two other occasions by a third party (whether or not the third party was the same person on each occasion). Assuming this is the first time this has happened, the employee will not be able to bring a claim.

Our fixed costs won't blow your budget



Our INTEMPO service provides you with unlimited telephone and email advice at a fixed cost. Call Tony Hyams-Parish to find out more.



Facts & Figures

Redundancy: £400 (Max/week) **Unfair Dismissal Cap:** £68,400
Maternity Allowance: £128.73/week or 90% of normal weekly earnings (whichever is less)
Statutory Sick Pay: £81.60/week
National Minimum Wage: £6.08 (21+) £4.98 (18-20) £3.68 (under 18)
Income Tax Personal Allowance: £7,475.00 (Under 65)



CASEWATCH

A summary of some important
Employment Cases

Gisda Cyf v Barratt

Where an employee is summarily dismissed by letter, the effective date of termination is the date on which the employee actually reads the letter - not the date it is sent.

Jackson v Liverpool City Council

A former employer had not been in breach of its duty of care when it provided a reference which referred to allegations against the former employee but made it clear that they had not been investigated. The employer was not negligent as the reference was true, accurate and fair.

NHS Leeds v Larner

A worker who had been on sick leave for an entire leave year and had not taken any holiday during that period, was entitled to a payment in respect of that year's unused statutory holiday entitlement on the termination of her employment.

Perry v Imperial College Healthcare NHS Trust

An employee on sick leave was unfairly dismissed for misconduct when she carried on with a second part-time job, for which she was still medically fit, without permission from the first employer.

WANT TO KNOW MORE?

If you would like to know more about these cases or how they affect you, call Tony Hyams-Parish on 01293 527744 or your usual contact in the Employment Team.

EMPLOYER LESS THAN 'SQUEAKY CLEAN' WHEN DEALING WITH WORKERS

In the case of *Autoclenz v Belcher and Ors*, the claimant and 19 others were engaged by A Ltd to provide car valet services at a client site in Derbyshire. In their individual contracts with A Ltd, each valet was described as a 'subcontractor' and 'self-employed independent contractor'. The valets nonetheless lodged tribunal claims seeking a declaration that they were either 'employees' or 'workers' for the purposes of claiming unpaid wages and holiday pay. The tribunal found that the claimants were actually employees of A Ltd, despite the



existence of contractual clauses negating personal performance and mutual obligations. The court said that when considering whether the words of the written contract represent the true intentions or expectations of the parties, all the circumstances of the case need to be taken into account.

WHAT DOES THIS MEAN FOR YOU?

Whatever label you attach to an arrangement, it is important to understand the real legal status. Getting it wrong can result in unexpected tribunal claims and backdated claims by the HMRC for unpaid tax and NI contributions. **There is a useful checklist you can use - call us if you want to know more.**

Employment Briefings

5 STEPS to ENCOURAGE GOOD PRACTICE WITH SOCIAL MEDIA

- 1 Adopt a social media policy to encourage appropriate employee use of social media.
- 2 Use the policy to prohibit employees using social media in ways that could damage your organisation.
- 3 Provide training to employees on the appropriate use of social media, and monitor for compliance.
- 4 DO NOT permit employees to use social media to harass colleagues and take disciplinary action where appropriate.
- 5 DO NOT allow employees to disclose or misuse confidential or proprietary information.

TEST YOUR KNOWLEDGE



Answer: 26 weeks



- Carry out Bribery Act risk assessment
- Organise Bribery Act training for managers
- Audit use of agency workers to ensure compliance with Agency Workers Regs

Need help with your 'To do' list? Why not call us.

UPCOMING EVENTS

24.11.11 Top 10 BIG Issues for Employers 2011 Topics include agency workers regs, without prejudice conversations, taxation of termination payments, holidays, Bribery Act, references and much, much more!

Dates TBC
Employment Law Essentials
A series of three courses for managers and HR professionals giving a general overview of essential employment law topics

To book a place go to www.rawlisonbutler.com or call Chris Field on 01293 527744



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