



EMPLOYMENT LAW UPDATE – OCTOBER 2009

SICK WORKERS AND HOLIDAYS

The recent ruling by the European Court of Justice in the case of **Pereda** has determined that a period of illness whilst on holiday does not count towards the minimum statutory period of 4 weeks annual leave under the Working Time Directive.

In this case Mr. Pereda suffered an accident at work approximately 14 days before commencement of his allocated period of 4 weeks annual leave. His injuries led to him being off work for 6 weeks so his sick leave almost entirely overlapped with his planned holiday. His subsequent request for an additional period of annual leave when he recovered was refused. The European Court ruled that his period of sick leave should not have counted towards his holiday time.

The European Court emphasized that the purpose of statutory leave is to enable the worker to rest and enjoy a period of relaxation and leisure. In contrast the purpose of sick leave is to ensure that he can recover from being ill. The result of which is that if a worker decides not to take annual leave during a period of illness he must be granted a replacement holiday period .

Therefore, if an employee falls sick before or during an actual period of leave they should be provided with a replacement period of leave when they become well.

RETIREMENT AGE

The recent judgement by the Court of Appeal in the **Heyday** case has set down that the Default Retirement Age should remain and is lawful.

The Group Age UK had challenged this arguing that the Default Retirement Age of 65 was not proportionate. However, they were defeated in this argument as the Court ruled it was both legitimate and proportionate.

As the Government is reviewing the Default Retirement Age which is currently set at 65 it is likely that it could be removed or raised in due course. The Court of Appeal in giving it's ruling considered that if there had not been an imminent review it would have ruled that the Default Retirement Age of 65 was unlawful.

	<p>So employers need to be aware that currently the Default Retirement Age of 65 remains in place but is likely to be altered or removed in the near future thus removing employer's right to force employees to retire at 65.</p>
	<p>INCREASE IN INJURY TO FEELINGS DAMAGES</p>
	<p>The Employment Appeal Tribunal has ruled in the case of Dabell v NSPCC that damages for Injury to Feelings in discrimination cases should be increased to reflect inflation as follows:-</p> <ol style="list-style-type: none"> 1 The lower band of £5,000 is to be increased to £6,000 2 The middle band of £15,000 is to be increased to £18,000 3 The upper band of £25,000 is to be increased to £30,000 <p>This will of course lead to higher awards of damages being paid out in cases where employers are found to have discriminated against their employees or workers. It also underlines why employers should ensure that they have Equal Opportunities Policies and training in place in their particular work places to reduce the risk of such claims.</p>
	<p>AGENCY WORKERS</p>
	<p>At the recent TUC annual conference in Liverpool the Prime Minister Gordon Brown stated "I believe that the fight for fairness must include Agency Workers and so pledge that when Parliament returns to our new Legislative Programme this will include equal treatment for Agency Workers".</p> <p>It would appear that the Government intends to ensure that Britain does not delay implementation of the UK of EC Agency Directive which will have significant implications for employers in the UK who make use of Agency Workers.</p>
	<p>MEDICAL QUESTIONNAIRES</p>
	<p>In the recent case of Cheltenham Borough Council v Laird the Local authority sought damages against a former senior employee on the grounds that she failed to mention her history of stress and depression in her pre-employment medical questionnaire.</p> <p>Central to this case was the wording of the Local Authority's medical questionnaire which did not require the Employee to disclose information about her history of stress and depression. It appeared that the questionnaire was poorly drafted. It was highlighted that the questionnaire did not contain a sweep up question calling for disclosure outside the questions asked for example, " is there anything else in your history or circumstances which might affect our decision to offer you employment " ?</p>

	<p>It is important that medical questionnaires are drafted properly and comprehensively so that an employer is able to obtain full medical evidence to ensure that a job applicant is physically and mentally able to undertake a particular role. The High Court took the view that the employee gave correct answers to each question that were neither false nor misleading and this resulted in the employee being granted an Ill Health Pension because of a depressive illness after a short period of employment.</p> <p>This case highlights the necessity of obtaining accurate pre-employment medical information about employees however, before acting on such information the employer must consider the Disability Discrimination Act 1995 and in particular the duty to make reasonable adjustments where a job applicant is disabled. If an employer does not do this or merely rejects an employee on the basis of a disability they could face a substantial claim for damages under the Disability Discrimination Act 1995.</p>
<u>PAY RATES FOR APPRENTICES INCREASE</u>	
	<p>Currently apprentices as a category are exempt from the National Minimum Wage. However, they must be paid at least the minimum contractual payment from August 2009 which is £95.00 per week. This will affect around 26,000 apprentices many of which work in areas such as hair dressing and social care and of whom 90% are women.</p>
<u>EMPLOYMENT TRIBUNAL STATISTICS 2008 TO 2009</u>	
	<p>The Employment Tribunal and Employment Appeal Tribunal statistics for 2008/9 have now been published and the key findings are as set out below:-</p> <ul style="list-style-type: none"> • There has been a 20% increase in the number of claims accepted by the Tribunal • There has been an increase in unfair dismissal, redundancy pay and breach of Contract claims and a reduction in Working Time Regulations, equal pay and sex discrimination claims • The maximum award in an unfair dismissal claim was £84,005 (subject to a cap of £66,000) the medium award was £4,269 and the average award was £7,959 • The maximum award in a race discrimination claim was £1,353,432, the medium award was £5,172 and the average award £32,115 • The maximum Sex discrimination award was £113,106, the medium award was £7,000 and the average award was £11,025 • The maximum award in a disability discrimination claim was £388,612, the medium award was £7, 226 and the average award was £27,235

	<ul style="list-style-type: none">• The maximum religious discrimination award was £24,876, the medium award was £4,291 and the average award was £10,616• The maximum sexual orientation discrimination award was £63,222, the medium award was £15,351 and the average award was £23,668• The maximum age discrimination award was £90,031, the medium award was 3,000 and the average award was £8,869• The maximum costs award in an Employment Tribunal claim was £25,000, the medium award was £1,100 and the average award was £2,470.
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If you require further information in relation to any of the above or you have an employment law or HR query please contact Marlene Hession at marlene.hession@fdl-law.co.uk or 0161 828 1560.

