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Government launches Red Tape Challenge website

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CIPD survey shows fear of increasing levels of industrial action

The latest Chartered Institute of Personnel and Development (CIPD) Employment Relations Survey highlights the need to boost employee engagement as public spending cuts put relations between management and trade unions under pressure. 71% of those surveyed agreed that there will be increasing levels of industrial action in the next 12 months and 33% predict strike action by their staff is likely.

Acas' response to workplace disputes consultation

Acas has welcomed the Government's proposal for all potential employment tribunal claims to be offered early conciliation with Acas first. Acas disagrees, however, with the proposals that unfair dismissal cases and appeals to the Employment Appeal Tribunal should normally be heard by a judge sitting alone.

Call for business evidence on flexible working alternatives to travel to work

The Department for Transport is calling for evidence from businesses on ‘alternatives to travel’ as the Government wants to encourage people to make journeys by sustainable, low carbon, modes of transport, but it also wants to encourage the use of alternatives such as home working, staggered hours and video-conferencing.

Guidance published on adequate anti-bribery procedures

The Ministry of Justice has published guidance on the procedures organisations should put in place to prevent persons from bribing. Adequate anti-bribery procedures will enable organisations to rely on the statutory defence to a charge of failing to prevent bribery under the Bribery Act 2010.

Validity of final warning may be revisited

In Davies v Sandwell Metropolitan Borough Council, the EAT has held that an employee's failure to appeal against a final warning did not prevent a tribunal from looking behind the validity of that warning when considering the reasonableness of a decision to dismiss. The fact that there was no appeal against the written warning does not save it from invalidity.

News Bite

The Government has accepted the recommendations of the Low Pay Commission and the following increases in the national minimum wage will take effect from 1 October 2011: (i) the standard adult rate for workers aged 21 and over will rise to £6.08 per hour (from £5.93); (ii) the development rate for workers aged between 18 and 20 will rise to £4.98 per hour (from £4.92); and (iii) the young workers rate for workers aged under 18 but above the compulsory school age will rise to £3.68 per hour (from £3.64).

Government launches Red Tape Challenge website

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Every few weeks the Government will publish all the regulations affecting one specific sector or industry. Employment regulations can be found under the 'general regulations' as they 'affect all sectors'. The site explains "How it works": 1. We publish: Every few weeks we publish all the regulations affecting one specific sector or industry; 2. You respond: You tell us what's working and what's not, what can be simplified and what can be scrapped; 3. We act: Based on your feedback, we start getting rid of unnecessary red tape.

The current challenge is the retail sector. From 7 April to 5 May the site is open for thoughts on regulation in the retail sector and how the Government can cut it. One aspect relating to employment is the Government asking for views as to whether the regulations which relate to the hours that retailers are allowed to open on Sundays and on Christmas Day, which restrict larger shops to a maximum of 6 hours trading, should be scrapped altogether.

At the end of the three-month review following each sector, departments will set out which regulations will be repealed and by when. For those regulations that are going the Government will aim to repeal them as quickly as possible. The site confirms that EU regulations cannot be scrapped, but the the Government will review any instances of 'gold-plating' – where the UK has gone beyond the minimum required by the EU legislation.

CIPD survey shows fear of increasing levels of industrial action

The latest CIPD Employment Relations Survey highlights the need to boost employee engagement as public spending cuts put relations between management and trade unions under pressure. 71% of those surveyed agreed that there will be increasing levels of industrial action in the next 12 months and 33% predict strike action by their staff is likely.

According to a survey of nearly 400 employers by the Chartered Institute of Personnel and Development (CIPD) - the Employment Relations Survey - 71% agree that there will be increasing levels of industrial action in the next 12 months and 33% predict strike action by their staff is likely. The Survey particularly highlights deteriorating employment relations in the public sector as spending cuts begin to bite. 79% of public sector respondents agree employers can expect to face increasing levels of industrial action over the next year and 49% say strike action among their staff is likely in the next 12 months. In contrast, just 18% of private services sector respondents anticipate employees in their organisation may take strike action in the next 12 months.

The survey also found six in 10 employers see developing or maintaining employee engagement as the most likely (65%) and most desirable (59%) focus for developing positive employee relations going forward.

Acas' response to workplace disputes consultation

Acas has welcomed the Government's proposal for all potential employment tribunal claims to be offered early conciliation with Acas first. Acas disagrees, however, with the proposals that unfair dismissal cases and appeals to the Employment Appeal Tribunal should normally be heard by a judge sitting alone.

In its submission to the Government's consultation document 'Resolving workplace disputes', Acas has said that the plans for all potential employment tribunal claims to be offered early conciliation with Acas first would enable the expansion of Acas' successful Pre-Claim Conciliation (PCC) service. Over three quarters of disputes that are appropriately referred for PCC do not go on to become tribunal claims but the scope of the service is currently limited by the fact that the Acas Helpline is the main source of referrals. Although this provides substantial coverage, the proposals the consultation puts forward would enable Acas to reach all potential claimants.

The submission also shows that Acas disagrees with the proposals that unfair dismissal cases should normally be heard by an employment judge sitting alone, and that the Employment Appeal Tribunal should be constituted to hear appeals with a judge sitting alone. Acas says lay members can add value to decision making in cases that entail an appreciation of the practical realities of day-to-day workplace employment relations - particularly claims of discrimination and unfair dismissal where a test of reasonableness applies. Acas also believe there is a risk that if organisations make routine use of compromise agreements in nearly all terminations some managers could grow over-reliant on them as a 'safety net', and might be less inclined to embark on the difficult conversations necessary to address issues such as behaviour, performance or attendance at an early stage.

Call for business evidence on flexible working

The Department for Transport is calling for evidence from businesses on 'alternatives to travel' as the Government wants to encourage people to make journeys by sustainable, low carbon, modes of transport, but it also wants to encourage the use of alternatives such as home working, staggered hours and video-conferencing.

The Call for Evidence is part of a programme to encourage individuals and businesses to use alternatives to travel to work where they feel these would be appropriate. The Call for Evidence seeks contributions from a wide range of businesses, sectors, organisations and individuals, which document experiences and impacts of, and the future potential for, using alternatives to travel. In addition, the Government is interested to hear from those not currently making use of such alternatives about the reasons behind this.

The Call for Evidence will inform the development of a longer term strategy on alternatives to travel by focussing on measures which can reduce travel for work (commuting and business trips) or which can help reduce travel for work during peak times. Therefore the travel alternatives the Government are seeking to investigate, include: home working and remote working; flexible working and staggered hours (in order to reduce travel during peak periods); teleconferencing and videoconferencing and any other alternatives to travel which can help reduce work-related travel.

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Having adequate anti-bribery procedures will enable organisations to rely on the statutory defence to a charge of failing to prevent bribery under S.7 of the Bribery Act 2010. The guidance sets out six guiding principles, each followed by commentary and examples. The principles are: proportionate procedures, top-level commitment, risk assessment, due diligence, communication (including training) and monitoring and review.

Organisations now have 3 months to familiarise themselves with the guidance prior to the Act's implementation on 1 July 2011. Employers should conduct a full review of contractual clauses, staff handbooks, corporate codes of conduct and any related policies, such as corporate hospitality, acceptance of gifts, etc., to ensure the principles of the guidance are incorporated.

Validity of final warning may be revisited

In Davies v Sandwell Metropolitan Borough Council, the EAT has held that an employee's failure to appeal against a final warning did not prevent a tribunal from looking behind the validity of that warning when considering the reasonableness of a decision to dismiss. The fact that there was no appeal against the written warning does not save it from invalidity.

Ms Davies, a teacher, received a final warning based on allegations concerning inappropriate conduct during a lesson. At the disciplinary hearing Ms Davies produced evidence which undermined the allegations, but the committee refused to admit it because it had not been produced 7 days before the hearing according to procedure. She appealed against the final written warning. The appeal would have been by way of a re-hearing, but, on advice from her union that the Council might revisit the sanction and dismiss her, Ms Davies dropped her appeal. Following five further allegations of misconduct which were upheld, the Council determined that this, together with her final warning, justified dismissal.

The Tribunal upheld the dismissal, primarily on the basis that Ms Davies had chosen not to appeal against the warning, so the Council were entitled to take the it into account and the dismissal was within the range of reasonable responses. In upholding Ms Davies' appeal, the EAT held that the tribunal had not considered the validity of the final written warning. Her failure to appeal did not imply that the allegations made against her were true – she did not appeal because of the advice given to her by her union. Therefore the tribunal should not have assumed that, because of the failure to appeal, the final written warning was valid. The fact of no appeal against a final written warning does not save it from invalidity.

The lesson is that a final warning which is found to be invalid by a tribunal but which an employer has relied on in reaching a decision to dismiss can have serious consequences in the context of an unfair dismissal claim. In such cases, employers will not escape liability just because the employee chooses not to appeal.

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