



In The Know

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Rise in demand for Acas to resolve disputes

Acas has seen a significant increase of 15% in demand for their help resolving large-scale disputes in the past year according to its annual report for 2010/11.

The conciliation service's 2010/11 [annual report](#) shows it dealt with 1,054 collective disputes over the period, up 15% from 2009/10. Pay continued to be the top issue followed by redundancy. Acas dealt with almost 18,000 disputes between individuals and their employers in 2010/11 through their pre-claim conciliation (PCC) service, an increase of 80% on the previous year. The proportion of cases where no claim was then made to an employment tribunal was 74%, meaning that 13,158 cases were prevented.

Employers told to get set for Olympics

With a year to go until the Olympics Acas has issued [guidance](#) to employers on getting the best from their staff and avoiding absence during the Games.

Acas is advising employers to start talking to employees early to manage expectations and minimise the impact on productivity. Acas encourages employers to be: (i) flexible, if possible, for example, by altering start and finish times; (ii) clear about what is expected from employees in relation to attendance and performance; (iii) communicative - start early talks about managing leave and working hours; (iv) honest about how changes to working practices will be managed and give reasons if not possible; (v) fair about responding to requests for time off.

Non-regulatory approaches before legislating

The CBI and the EEF have published reports urging the Government to consider non-regulatory approaches before any additional legislation is introduced in the employment domain.

Currently the Government is consulting on 'Modern Workplaces', which includes the right to request flexible working to all employees. The EEF has published a report, ['Flexibility in the Modern Manufacturing Workplace'](#) which highlights the growing need for flexibility and recommends a pause in employment regulation, with non-regulatory approaches being considered first before additional legislation is introduced. The CBI has also produced a report, ['Thinking Positive: the 21st century employment relationship'](#), highlighting that the employment relationship has changed and become more flexible, and that the Government needs to embed this flexibility in its approach in the future by setting out suggested processes in more flexible guidance or codes of practice.

New website to help vulnerable workers

The TUC has launched a new website to help people find out more about their basic rights at work, from the National Minimum Wage, to working time and annual leave entitlements, together with advice on enforcement.

[Basic Rights @ Work](#) introduces vulnerable workers - people who have little knowledge of their employment rights, who find it hard to access advice and who do not have the ability to protect themselves against abuses of their rights - to information about employment rights in the UK and how to enforce these rights through statutory enforcement bodies. The site has details of the employment rights that apply to different categories of workers, information about basic rights - from the National Minimum Wage, to working time and annual leave entitlements.

Correct test for disregarding contractual terms

In [Autoclenz Ltd v Belcher and others](#), the Supreme Court held that courts should look outside the written terms of a contract to determine what was actually agreed, where it is argued that those terms do not reflect the reality of the working relationship.

The claimants' contracts referred to them as sub-contractors and included clauses: (i) allowing for them to provide substitutes, supposedly meaning they did not have to do the work personally; (ii) stating that the company was not obliged to provide work and they were not obliged to do any work offered. The tribunal, EAT and the Court of Appeal all held that the individuals were employees and therefore entitled to statutory paid leave and the national minimum wage as the contractual documents bore no practical relation to the reality of the employment relationship.

The Supreme Court agreed. While a court may disregard contractual terms intended to deceive a third party, a bi-party 'sham' is not the only circumstance in which a court can ignore written terms. The key question is what was actually agreed? This must take into account the relative bargaining power of the parties, as the employer often holds the 'whip hand'. In this case, the terms of the claimants' written contracts, which were inconsistent with the true working relationship, could be ignored. As the claimants had entered into contracts under which they had to provide personal service, and there was mutuality of obligation to provide work, and perform work under the control of Autoclenz Ltd, they were employees.

Suitability relates to the individual

In [Bird v Stoke-on-Trent Primary Care Trust](#), the EAT confirmed that when judging whether a job is a suitable alternative to being made redundant, the two questions to be asked are: whether the alternative job is suitable employment for the employee and whether the refusal of the job was reasonable?

In this case the employer refused to make a redundancy payment to Ms Bird. They believed she had unreasonably refused offers of two suitable alternative jobs. A tribunal rejected her claim for a redundancy payment on the basis that her rejection of the one of the jobs was unreasonable.

The EAT upheld Ms Bird's appeal. In assessing 'suitability', the question is not whether the employment is suitable in relation to that sort of employee, but whether it is suitable in relation to that particular employee. The whole of the job must be considered, including the tasks to be performed and the terms of employment. The two questions to be asked are: whether the alternative job is suitable employment for the individual employee concerned and whether the refusal of the job was reasonable? However, the tribunal had substituted its own view about the reasonableness of Ms Bird's refusal and had not considered her particular circumstances. As the tribunal's approach to the two questions had been flawed, its decision could not stand and the case was remitted to a different tribunal for rehearing.