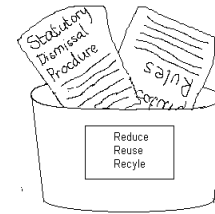


Moon & Co

Solicitors

Employment Newsletter

Highlights Spring 2009



All Change

It's that time of year again when further changes to employment law that have been trailed for ages are brought into force. This newsletter looks at two of the most relevant areas

Holidays are here again

The last stage of the gradual increase in holiday entitlement has finally come into force. In essence all employees are now entitled to the equivalent of 5.6 weeks paid holiday per year (previously 4.8 weeks since October 2007). For many this will not amount to a change as many employees on a straightforward 5 day working already get 20 days leave plus the 8 standard bank holidays. Not so bad for employers that close on bank holidays but more of a problem where the employer is open for business 365 days a year and needs staff there all the time. Now they must find staff and funds to cover the extra holiday.

Other points to bear in mind are

- The employee is not entitled to the actual bank holidays but to the equivalent time off
- Employer can specify when employees take holiday
- Where the 5.6 weeks add up to an odd number of hours employees can be asked to come in late, go home early or take a whole shift off but only be paid for the part which equates to holiday.
- Employers can no longer allow employees to carry over or pay employees in lieu of the extra 1.6 weeks holiday in excess of the original 4 week basic entitlement (save when the employee leaves employment)
- employees can accrue holidays whilst on sick leave and is entitled to take it or be paid at some point

If you have specific questions about holiday entitlement please do give me a call.

End of statutory disciplinary, dismissal and grievance procedures; nearly

Many employers and employees alike may be glad to see the end of the statutory dismissal, disciplinary and grievance procedures which were brought into force in October 2004. Originally they were intended to help employers and employees resolve disputes in the workplace and reduce the number of claims to the Employment Tribunals. In reality they led to a large number of additional claims about what the regulations themselves meant and whether the employee and/or employer was in breach. This was a serious matter as breaches of the procedures could mean automatic unfair dismissal and increases (or decreases for the employee's failures) in compensation of between 10% and 50%.

After many complaints two years ago the government announced a review and agreed that the rules would be scrapped. However they refused to repeal them until a substitute was agreed. From 6 April 2009 the substitute is in force but the last vestiges of the old scheme will be seen for a while yet.

Transitional Rules

These are a little complicated but in brief follow the old rules if

- the dismissal, or relevant disciplinary process had happened or started by 5 April 2009
- a grievance was raised by 6 April 2009
- the grievance occurred wholly before 6 April 2009

- if the grievance started before and continued after 6 April 2009 and the employee either sends a grievance letter or sends a claim to a tribunal based on the grievance
 - in most cases on or before 4 July 2009 but
 - in a few cases on or before 4 October 2009

Although if the old rules are followed employers and employees are likely to have complied with the new rules, there are differences.

The Old Rules; Summary

The old rules you may recall applied to all dismissals, relevant disciplinary sanctions (e.g. demotion) and grievances. They required three steps, a letter explaining to the employee that they may be dismissed or subjected to the disciplinary sanction, a right to attend a meeting to put forward their case, and a right of appeal. Employees also had the right to be accompanied at the meeting by a trade union representative or work colleague.

The New Rules; Summary

A new ACAS Code of Practice sets out the principles employer and employee should follow to achieve a reasonable standard of behaviour. The new code doesn't apply to redundancies or the ending of a fixed term contract but new codes about these are expected. Although the procedures only relate to employees it is not always easy to decide on a workers status therefore it is wiser to follow the procedures if there is any doubt.

If an Employment Tribunal considers a party has unreasonably failed to follow the new code it may uphold their claim and increase compensation by up to 25% though a dismissal will not be automatically unfair.

In assessing whether the employer acted reasonably the tribunal may take account factors it considers relevant e.g. of the employers size and experience.

To help explain the ACAS code, ACAS has written a guidance document. Breach or compliance with the guidance itself will not be taken account of in assessing whether a party acted reasonably but it can help an employer or employee understand what is expected of them.

Generally the Code will expect employers and employees to

- deal with matters **promptly** without unreasonable delay.
- carry out all necessary **investigations**.
- act **consistently**.
- **inform** employees of the basis of any problem
- let employees **put their case** before any decision is made.
- allow employees to be **accompanied** to any formal disciplinary or grievance meeting
- allow employees to **appeal** against any formal decision

One particular point to bear in mind is that now employers must specifically tell employees of their right to be accompanied at meetings. It won't be enough to say the right exists and is in their written procedures.

Grievance Procedure

In the case of grievances employees will not now have to put their claim in writing and wait 28 days before making a claim. However a tribunal may take account of them not doing so in assessing any compensation.

Although the new Code does not specifically apply to grievances raised after employment has ended it is still advisable to follow the code if an employee raises a grievance or the tribunal may be more likely to uphold the claim and increase the compensation.

Current Written Procedures

Employers should review their dismissal, disciplinary and grievance procedures. In practice if they complied with the old rules few adjustments if any may be needed. However ACAS guidance suggests that they should be reviewed, employees agreement to them obtained and managers trained in their use.

Interpretation of the New Rules

It is still in question how much the Employment Tribunals will use the decisions under the old rules to influence whether they believe the parties have acted fairly and reasonably under the new rules. We will have to wait and see.

For more guidance on the rules and reviewing your current procedures please do give me a call.

Welcome to our e-newsletter which looks at new cases and employment related matters, which are likely to be of interest to many. However specialist advice should be obtained before taking or refraining from taking action based on comments in this newsletter, which is only intended as a brief note. For more information or if you have specific concerns phone me on **01233 714055** or e-mail.

E-mail me kirsten@moon-and-co.co.uk to cancel at any time.

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