KIPPEN CAMPBELL LLP

EMPLOYMENT LAW BULLETIN

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EMPLOYMENT LAW UPDATE

1. New Government and Important Employment Law Changes Coming

At the beginning of the month, the Labour Party took office after ousting the Conservative Government in the General Election. The change of government is going to result in a raft of amendments, some of which have been highlighted in the Manifesto. Under Labour's Making Work Pay pledge, promises have been made to do away with zero hour contracts, fire and rehire, and to introduce a genuine living wage.

Other important changes affecting all employers will be coming which may result in more Employment Tribunal claims. I will do a separate update on this shortly.

In other Employment Law news:

2. Travel Times of workers not 'working time'

In Taylors Service Ltd (dissolved) and another v The Commissioners for HM Revenue and Customs [2024] EAT 102, the Employment Appeals Tribunal (EAT) held that time spent 'just' travelling was not 'time work' for the purposes of regulation 30 of the National Minimum Wage Regulations 2015, and nor could it be deemed to be 'time work' under the exception for travel time in regulation 34.

Time work is defined as work outside of salaried work for which a worker is entitled to be paid. Travel time between jobs or business locations can be treated as time work. However, the following is not classed as time work:

- Travel between the worker's home and their usual place of work.
- Travel between the worker's home and an assignment.

In this case, Taylors Service Ltd (TSL) and Taylors Poultry Services (TPS) engaged workers on zero hours contracts and supplied them to the poultry industry. The companies provided a minibus that would collect the workers from their homes (or occasionally from their business premises) and transport them directly to their first assignment. On top of a normal working day, these journeys could be up to eight hours long. The workers were paid £2.50 per hour.

In 2020, HMRC decided that the time workers spent travelling to and from farms around the country should be reimbursed at the NMW and issued Notices of Underpayment totalling around £62,000 of wage arrears, plus penalties. TSL and TPS had their claim against the wage arrears dismissed in the Employment Tribunal (ET). However, the EAT overturned the ET's ruling, citing the Supreme Court's decision in *Royal Mencap Society v Tomlinson-Blake; Shannon v Rampersad and another (t/a Clifton House Residential Home)* [2021] UKSC 8. In this case, the Supreme Court held that care workers who were expected to sleep at, or near, their workplace, and be available to be called on during the night, were not entitled to the NMW for their entire sleep-in shifts. When workers were sleeping, they were not working; rather they were 'available to work'. The EAT, having examined the Supreme Court's reasoning, stated that time spent travelling to work could not be classed as working unless there was work to be done whilst travelling.

The EAT recognised that this decision may be unfair as the workers had no choice but to travel long distances if they accepted specific assignments; however, it was for Parliament, not the Courts, to amend any defects in the legislation.

This case will clarify for many clients a question which has arisen from time to time over the years. Any questions on subjects such as this please feel free to contact myself or Sally.

3. Improved workplace provision for those menstruating

A study by Heriot-Watt University, which reviewed evidence on menstrual health and conducted 55 interviews, revealed that menstruation remains a significant cultural taboo in many workplaces. The research highlights that women, trans and non-binary people who menstruate face challenges, including poor access to toilets and washing facilities, and pain and mental health symptoms.

The study calls for line managers to be educated on the topic, the introduction of menstrual health education programmes, and for menstrual products to be made available in all workplace toilet and bathroom facilities.

4. **Generative AI is not replacing jobs – yet!**

Putting to rest fears of mass unemployment (for now), research by Nash Squared, a global provider of technology and talent solutions, found that whilst 74% of UK tech employers have incorporated generative AI into their business to some extent, 51% say that it is used as a productivity tool to support existing jobs, with 99% stating that it will not replace employees.

5. **Subject Access Request (SAR) denial upheld where there is a risk of intimidation**

In *Harrison v Cameron and other* [2024] EWHC 1377 (KB), the High Court upheld a Controller's refusal to name people recorded in a heated telephone conversation in response to a SAR. This was because there was a significant risk of the SAR requester intimidating the recipients of the recording.

6. **Commenting on colleagues appearance could count as sexual harassment**

The ET has ruled that telling a colleague they look “nice” could be sexual harassment. According to The Telegraph, a senior lawyer made such a comment to a legal secretary at his law firm before asking her “Am I allowed to say that?”.

The comment was found by the ET to be a sexual one which created an “intimidating” environment for the Claimant who described feeling “violated”. Although it did not on its own breach any employment laws, taken alongside other incidents of ‘unwanted conduct’, it could result in an employee making a successful ET claim.

7. ***Groom v Maritime & Coastguard Agency [2024] EAT 71*** **- EAT held that a volunteer was a worker when attending activities for which they were entitled to remuneration.**

The Claimant was a volunteer in the Coastal Rescue Service (CRS). He brought a claim because he was not permitted to be accompanied by a trade union representative at a disciplinary hearing. He argued that he was a worker under section 230(3)(b) of the Employment Rights Act 1996.

The CRS volunteer handbook stated that appointments were voluntary. It also set out what was expected of volunteers, including attending training and "maintaining a reasonable level of incident attendance". For certain activities, volunteers could claim "minor costs caused by your volunteering, and to compensate for any disruption to your personal life and employment and for unsocial hours call outs." Many volunteers did not claim any costs.

The Employment Tribunal held that the Claimant was not an employee as there was no employment contract or automatic right to remuneration.

The Employment Appeal Tribunal allowed the Claimant's appeal. It concluded there is no definition of "volunteer" and that volunteer status will differ depending on the particular arrangement between the parties. The EAT held that the fact that expenses were not paid automatically and some volunteers did not claim them was irrelevant. A contract came into existence when a volunteer attended a relevant activity for which they had a right to remuneration. In addition, a volunteer's attendance was governed by a Code of Conduct, which set minimum attendance levels at training and rescue incidents. These gave rise to a contract for providing services rather than simply an agreement to reimburse expenses.

Kind Regards

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