PINI FRANCO LLP

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Autumn Issue

Employment Law Update

A round-up of the latest news in employment law

SUMMARY

A round-up of the latest employment news:

A Summary of Key Developments in Employment Law

1 October 2014

- Statutory regime for flexible working requests has been abolished in favour of a statutory code of practice. The right to request flexible working has also been extended to all employees with 26 weeks' service (not just those with caring responsibilities).
- Fathers and partners will be able to take unpaid time off to attend up to two antenatal appointments and will be protected from detriment and dismissal as a result of exercising those rights.
- Annual national minimum wage rate increases to take effect (see page 2).
- Equality Act 2010 (Equal Pay Audits) Regulations 2014 obliging tribunals to order employers found to be in breach of equal pay law to carry out equal pay audits in certain circumstances to come into force.
- The statutory qualifying period for unfair dismissal will be removed where the dismissal is connected with the employee's membership of the Reserve Forces.
- Small and medium-sized employers will be entitled to claim monthly payments from the Ministry of Defence for periods when reservist employees are absent on military service.

5 April 2015

- New system of shared parental leave will be available to parents of children due to be born or placed for adoption with them on or after 5 April 2015.
- Removal of the requirement for 26 weeks' service before employees become entitled to adoption leave.
- Introduction of a new right for both single and joint adopters to attend adoption appointments together with protection against suffering a detriment or being dismissed in relation to exercising that right and prevention of employees taking paternity leave if they have exercised a right to take paid time off to attend an adoption appointment in respect of that child.

A trusty reference

"The bank owed a duty to exercise reasonable skill and care in preparing the reference."

A recent case in the High Court saw a casino in Mayfair bring a claim against an Italian bank, *Banca Nazionale del Lavoro*, for providing an inaccurate reference for a customer.

The Bank described the customer as "*trustworthy up to the extent of £1.6 million in any one week*". This prompted the casino to grant the customer a cheque-cashing facility. Needless to say, the customer had a fantastic time presenting cheques that turned out to be forgeries.

It then came to light that this customer had never even had funds in his bank account - which begs the question of how the bank came up with the reference for £1.6 million. The answer to this was an overzealous bank employee who, according to the Bank, had allegedly given the inaccurate reference without actual authority.

The casino was entitled to recover the amount paid out under the facility, subject to a deduction of 15% for contributory negligence. In awarding the damages, the Judge concluded: "*The bank owed a duty to exercise reasonable skill and care in preparing the reference. That it failed to do. The account had a nil balance. On any view, reasonable skill and care cannot have been exercised.*"

The decision of the High Court is a reminder of the circumstances in which a duty of care can arise when giving a response and the consequences resulting from a breach of this duty of care by the actions of an employee.

(Playboy Club London Ltd and others v. Banca Nazionale Del Lavoro SPA [2014] EWHC 2613 (QB)

National minimum wage increases for October 2014

The Government has announced the following increases in the national minimum wage, which will take effect from 1 October 2014.

The new rates are as follows:

- The **standard adult rate** (for workers aged 21 and over) will rise by 3% to **£6.50 an hour** .
- The **youth development rate** (for workers aged between 18 and 20) will rise by 2% to **£5.13 an hour**.
- The **young workers rate** (for workers aged under 18 but above the compulsory school age who are not apprentices) will rise by 2% to **£3.79 an hour** .
- The rate for **apprentices** will rise by 2% to **£2.73 an hour**.
- The **accommodation offset** will rise by 3.5% to **£5.08 a day**.

Born in the USA

"tribunals will look at all of the circumstances surrounding an employee's assignment "

The Employment Appeal Tribunal ("**EAT**") has upheld a tribunal's decision that a US citizen ("**Mr Fuller**") employed by a US company, who was required to spend around 49% of his working time in Great Britain, could not pursue unfair dismissal or discrimination claims in an employment tribunal.

The Employment Judge made it clear that the Employment Rights Act 1996 did not apply as Mr Fuller had not given up his base in the US and moved to Great Britain, despite carrying out work in Great Britain and other countries. He had entered into a contract with an "overwhelmingly close connection" with the US and this contract had not been overtaken by events.

Further, the dismissal had been carried out in the US, and the employee's assignment to Great Britain had finished before his employment was eventually terminated. In these circumstances, the Judge had been entitled to decide that the employee did not have the required connection with Great Britain and British employment law for him to be protected by the relevant legislation.

Notwithstanding its decision, the EAT accepted that "*it may be thought to be odd that a person working in this country does not have the protection of discrimination laws applicable to those who may work in the same office as he does*" and it agreed that many might argue that "*an employer who requires his employees to spend considerable time working in Great Britain should thereby be subject to legislation enacted by the British Parliament*".

A note to employers: tribunals will look at all of the circumstances surrounding an employee's assignment when deciding whether there is a connection with one country or another. Physically working in Britain does not mean that an employee has severed ties with his home country nor that he is protected under British employment law. However, a tribunal in these cases will usually consider all the facts in determining how close a connection there is to Great Britain. It is therefore important for employers to treat these matters with extreme care.

Closing the loopholes in zero hours contracts

The Government has launched a consultation on the potential loopholes employers may use to avoid the proposed exclusivity ban in zero hours contracts (generally understood as an employment contract between an employer and a worker, which means the employer is not obliged to provide the worker with any minimum working hours, and the worker is not obliged to accept any of the hours offered) and seeks views on penalties and remedies.

The consultation will close on 3 November 2014.

Preventing employers from avoiding an exclusivity ban

Employers may use potential loopholes to avoid a proposed exclusivity ban in zero hours contracts, such as offering contracts that guarantee just one hour of work. There are also concerns that employers will simply offer no work or fewer opportunities to individuals who choose to work for another employer. The consultation seeks views on how best to close any such loopholes.

Providing workers with a route of redress

This could include redress in the tribunals for an individual on a zero hours contract if they are treated detrimentally by their employer as a result of taking another job against the wishes of their employer.

Proposed codes of practice for zero hours contracts

Business representatives and unions should work together to develop sector-specific codes of practice to help guide the fair use of zero hours contracts. The codes are expected to cover:

- When zero hours contracts should be used and how to identify them;
- Rights and responsibilities of the individual and the employer;
- Allocating work and notice of hours of work or cancellation of work.

It is widely acknowledged that there is insufficient guidance and information relating to zero hours workers. The codes of practice and any other guidance will be very useful to employers, individuals and practitioners.

It is difficult to calculate accrued benefits when individuals have an irregular work pattern. Guidance on how to calculate accrued benefits for individuals working under zero hours contracts will most likely assist with calculating those of other casual workers as well.

"Business representatives and unions should work together to develop sector-specific codes of practice"

PINI FRANCO LLP

22-24 Ely Place, London EC1N 6TE

Tel: 0207 566 3140

Fax: 0207 566 3144