



May Bytesize Employment Law

Sleeping on the job

The Employment Appeal Tribunal recently decided three conjoined cases on the vexed question of when workers who are required to sleep at work are working, and thus entitled to the national minimum wage. Unfortunately the decision has been summarised by some commentators as 'it depends'. The advice is that the question is one to be decided by taking multiple factors into account. The most important will include whether the employer is under a statutory obligation to have someone on the premises, what restrictions are placed on the worker's ability to leave the premises, the degree of responsibility undertaken by the worker and so on. Specific advice should be taken on each case as it arises, particularly given the criminal sanctions which may flow from getting it wrong.

Focus Care Agency Ltd v Roberts

Ground breaking Aspergers case

In a recent Employment Appeal Tribunal case the court held that use of a multiple choice recruitment test was discriminatory and put applicants with Aspergers at a significant disadvantage. The case is likely to lead to a review of recruitment processes to ensure that employers do not fall foul of the Equality Act. The applicant had asked to be able to provide short narrative answers as an alternative to the multiple choice responses which her condition made problematic for her, but the employer refused. The Tribunal found that the refusal amounted to a failure to make reasonable adjustments.

GLS v Brookes (UKEAT/0302/16/RN)

Employment Tribunals - limits and decisions

Maximum compensatory awards for unfair dismissal awards in the Employment tribunal have risen to £80,541 in April 2017. The amount of a week's pay for redundancy and basic award calculations has risen to £489.

In a new development Employment tribunal decisions are now available online on the gov.uk website.

<https://www.gov.uk/employment-tribunal-decisions>

The webpage allows the public to search for judgments from England, Wales and Scotland using the drop-down menu and a search box. A selection of decisions from 2015 to 2017 are available on the page currently.



Contrasting decisions on headscarves

The European Court of Justice (CJEU) has recently determined two cases involving the dismissal of women for refusing to remove their headscarves at work.

In the first case, the court ruled that a company's policy did not amount to discrimination on the grounds of religion because the policy that was in place prohibited the wearing of all religious symbols. The court held that the policy's aim was to protect the company's image of neutrality which was a legitimate aim, particularly on the basis that it applied only to customer facing employees.

In the second case, the court ruled that if an employer asks a Muslim employee not to wear a headscarf due to subjective considerations such as customer's preference rather than a general rule on neutrality as a policy, that is not a 'genuine and determining occupational requirement', and is indirectly discriminatory.

When implementing dress policies employers should pay clear attention to the risk of the indirectly discriminatory impact of such a policy. Employers should be able to objectively justify their approach, which involves identifying a legitimate aim.

Achbita v G4S Secure Solutions NV and Bougnaoui v Micropole Univers

Statutory Rate increases now in force

The national living wage which applies to workers aged 25 and over increased on 1 April from £7.20 to £7.50 per hour.

The following changes took place in the national minimum wage:

- 21 to 24 increased from £6.95 to £7.05 per hour;
- 18 to 20 increased from £5.55 to £5.60 per hour;
- 16 to 17 increased from £4.00 to £4.05 per hour;
- the apprentice rate increased from £3.40 to £3.50 per hour; and
- the accommodation offset increased from £6.00 to £6.40 a day.

The standard rates of statutory maternity pay, paternity pay, adoption pay and shared parental pay increased from £139.58 to £140.98 per week from 2 April 2017. There was also an increase in the standard rate of statutory sick pay from £88.35 to £89.35 per week from 6 April 2017.



Employment & HR – we can help

Our team of employment lawyers don't just provide legal advice on all people issues.

We spend our time learning about your business and understanding your objectives - enabling us to provide commercial solutions, delivered on time, and tailored to fit.

We'll advise throughout the employment relationship from recruitment and selection through to discipline and dismissal - and everything in-between.

Experience

Our clients are a mix of small to medium sized, owner managed businesses and large, household names. As a result, we are used to dealing with, and tailoring our language and approach to meet the needs of both growing businesses and large organisations, dealing with directors and HR professionals.

Stay up to date

Employment is one of the most rapidly developing areas of law. To help guide you through, we'll ensure you are kept up to date with all the latest changes through our series of email updates and regular breakfast seminars.

Training courses

We provide a range of training courses tailored to meet your needs. Our aim is to equip delegates with the skills to be able to deal with new and difficult employment and HR issues.

Through case studies, covering real life transactions, we'll bring the topic to life and provide delegates with an opportunity to put their training into practice!

Included below is a snapshot of some of the training courses we have run in the past, and we can also create specific training courses.

Conducting employee investigations	Managing a TUPE transfer	Dealing with discrimination	Managing sickness absence
Managing poor performance	Family friendly rights	Dealing with discipline & grievance	Essential employment law
Managing stress	Avoiding unfair dismissal	Data protection	Navigating the employment tribunal



Key contacts



Claire Bell
Director
T: 0115 8448 350
M: 07725 592 658
E: claire.bell@actons.co.uk
Twitter: @HR_law_news

Claire has over 20 years' experience acting for employers in all types of employment disputes. She has particular expertise in more complex cases involving multiple redundancies, collective consultation, TUPE, data protection, whistleblowing and discrimination claims.

Claire joined Actons in 2004 having previously worked at national firms DAC Beachcroft and Shoosmiths.



Nic Elliott
Director
T: 0115 9100 253
M: 07736 764 170
E: nic.elliott@actons.co.uk
Twitter: @NicEActons

Nic deals with a broad range of employment law issues, regularly advising on complex and commercially sensitive litigation.

He advises on the exit of senior employees and directors, complex absence management issues and provides general advice on day to day employee relations matters.

He also runs and advises on employee investigations.

He joined Actons in 2012 after 8 years at international law firm, Wragge & Co.