



Further Education: ByteSize Employment Law

Extension of time granted following 'unlawful' ET Fees order

The Supreme Court delivered a landmark judgment in July 2017 declaring Employment Tribunal Fees to be unlawful because it prevented access to justice. Following on from this, the Southampton Employment Tribunal have given a judgment granting an extension of time, thought to be the first of its kind, allowing a Claimant to file their claim again outside the original deadline. The Claimant's original 'in time' claim was rejected at an earlier date following a failure to pay the issue fee after their application for help with the fees was unsuccessful. The Claimant successfully argued that because Fees had been deemed unlawful, any decisions made under it including the rejection of their original claim for non-payment of fees, were similarly unlawful. The Tribunal accepted this, and in conjunction with other situational factors, deemed that an extension of time was just and equitable in all the circumstances. Worth being aware of if any of your employees filed a claim but didn't pay a fee.

Case referred to: Dhami v Tesco Stores Limited

EU withdrawal bill

Many laws surrounding workers' rights including the right to paid holiday, certain health and safety protections and equal treatment rights for part-time, fixed-term and agency workers are amongst the laws being transferred from EU law into UK law under the EU withdrawal bill, which won the first Commons vote on 11 September. The government have pledged to protect all the rights workers' currently enjoy under EU law. However, some have raised concern that the bill as it is currently drafted does not afford adequate protection for this. With many proposed amendments still outstanding as the bill passes into the committee stage, this is definitely one to watch!

The bills keep coming ...

The Data Protection Bill is set to replace the Data Protection Act 1998 had its first reading in the House of Lords earlier this month. The Bill will sit alongside the EU's General Data Protection Regulation (GDPR) and ensures that UK and EU data protection regimes are compatible. It is intended that this will allow for a smoother transition and easier data flow between the UK and EU organisations post Brexit. This is another one to follow as the Bill develops into its final form.



Mental health in the workplace

This year we've seen an increased awareness of mental health, from a national mental health awareness week, to the 'heads together' campaign. Recent research shows that 82% of employers believe they could do more to address mental health at work (CIC, September 2017) and as many as 1 in 3 UK employees are working with anxiety, depression or stress (PWC, July 2017).

Poor mental health affects both employee and employer, but there are a few steps that can be taken to ensure that issues are managed well:

- Staff training, teach managers how to recognise the signs of a potential mental health problem and best support colleagues.
- Regular reviews, giving employees the opportunity to raise any concerns they have.
- Encourage staff to take breaks and consider flexible working where appropriate.
- Take advice on what adjustments may be necessary for staff.

Watch your language

A Tribunal has ruled that a comment made during a performance review meeting suggesting that the employee would be "better suited to a traditional estate agency" amounted to age discrimination after the Claimant successfully argued that this had been taken to be a reference to her age. The Tribunal agreed with this, stating that the dictionary definition of "traditional" was long standing and such comment was therefore unlikely to be made to a younger employee. This case reminds employers that there are risks connected with the use of certain words and phrases which have the potential to be associated with a protected characteristic and may give rise to claim.

Case referred to: Gomes v 1. Hemworth Limited and 2. Graham Gold



Suspension, bridge to a claim?

The High Court have held that the suspension of a teacher was a 'knee-jerk' reaction with no alternative options being considered. They held this to be a breach of contract, which entitled the Claimant to claim constructive unfair dismissal. This acts as a reminder to all employers that suspension should not be used as the default position and where appropriate an alternative to suspension should be considered. There will inevitably be circumstances where alternatives are not appropriate or where suspension is the only way of achieving a fair investigation and the High Court have stressed here that this decision is not intended to imply that suspension will always give rise to a breach of contract claim. However, where suspension is being used remember to keep it proportionate, review regularly and keep in touch.

Case referred to: Agoreyo v London Borough of Lambeth

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.

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| 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



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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.



Laura Robinson
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Laura is an employment lawyer advising on a wide range of employment law issues for organisations and senior executives.

She works closely with Nic, regularly advising SME businesses and a number of household names on a range of employment law issues including dismissals, TUPE, discrimination, employment litigation and employment documentation.

She joined Actons in 2017 after completing her training and qualifying as a solicitor at a large regional law firm.