

December ByteSize

Employment Law

Company liable for Managing Director's drunken assault at "after party"

A recruitment company in Northampton has been held vicariously liable for the actions of its Managing Director when he assaulted an employee whilst drunk by the Court of Appeal.

The Court held that the assault, which took place at a hotel where the Managing Director and some other attendees of the company's Christmas party were staying, was "in the course of employment". A number of employees had joined the Managing Director for a drink at the hotel, which was not a planned aspect of the Christmas party, before the Managing Director punched another employee twice, fracturing his skull and rendering him unconscious, following a disagreement over a work matter. The Court's conclusion was that there was a sufficient connection between the incident and the Managing Director's employment as it had followed on from the Christmas party and the Managing Director had used the unplanned after-party drinks to deliver a lecture to his employees.

This is a timely reminder ahead of the Christmas party season to employers and employees of the potential for litigation to flow from office parties particularly where excessive alcohol is consumed.

Bellman v Northampton Recruitment Ltd

Statutory right to bereavement pay for parents to be introduced

The Parental (Leave and Pay) Act 2018 will give employed parents the right to two weeks' statutory bereavement leave if they lose a child under the age of 18 or suffer a stillbirth from 24 weeks of pregnancy. The leave must be taken within 56 days of the child's death. Statutory pay will be payable during statutory bereavement leave subject to eligibility criteria being met which will be similar to the eligibility criteria for statutory paternity pay. It is anticipated that the Act will come into force at some point in 2020.

Notice must be clear and unambiguous

Employers should tread cautiously if they receive an apparent resignation from an employee which is unclear or ambiguous.

In *East Kent Hospitals University NHS Foundation Trust v Levy*, Ms Levy, who was an assistant administrator in the Trust's records department, applied for a role in a different department and was offered the role subject to certain checks being completed. The following day she had an incident with a colleague and handed a letter to the hospital's operational manager which stated, "*Please accept one month's notice from the above date.*" The operational manager acknowledged the letter and confirmed when Ms Levy's last day in the records department would be.

The following week Ms Levy was informed that the role conditionally offered to her in another department was being withdrawn because of her poor absence record. In response to this Ms Levy asked to withdraw her notice but the operational manager did not agree to this on the basis of Ms Levy's absence record. A letter was sent by the Trust confirming Ms Levy's last day of employment.

The employment tribunal held that Ms Levy had been unfairly dismissed and the tribunal's decision was upheld on appeal to the Employment Appeal Tribunal ("EAT"). The tribunal determined that Ms Levy's letter was not clear and unambiguous notice of resignation from her employment as it could have been related to Ms Levy's role in the records department only. The tribunal determined that as Ms Levy had not resigned from her employment, she was dismissed by the Trust's letter confirming her last day of employment.

This case is a reminder to employers that they should seek clarification from employees who appear to have given notice in an ambiguous way. Employment tribunals may consider the overall circumstances and be wary of opportunistic employers treating ambiguous correspondence as a resignation in order to exit an unwanted employee.

Number of Employment Tribunal claims keeps rising

The latest quarterly statistics have been released by the Ministry of Justice for the period April to June 2018. Single case receipts more than doubled when compared to the same period in 2017 and the overall outstanding caseload has increased by 34%. The statistics also showed a significant increase in claimants who were unrepresented. In 2016/17 9% of claimants were unrepresented and this increased to 17% in 2017/18.

Removal of historical contractual term not void following TUPE transfer

The Transfer of Undertakings (Protection of Employment) Regulations 2006 provides that changes to an employee's terms and conditions will be void, and therefore unenforceable, if the sole or principal reason for the change is a TUPE transfer. There are limited exceptions to this rule such as where the terms of the employee's contract permit the variation.

In *Tabberer and others v Mears Ltd and others* the claimants, who were a group of engineers, received a travel time allowance as a term of their employment. The travel time allowance was no longer needed as it related to a practice that had long been phased out requiring the engineers to travel to different depots. The electricians had changed employer following a number of TUPE transfers but continued to receive the travel allowance on the basis that their previous employers considered it to be a legal requirement.

Mears Ltd believed the travel time allowance should no longer be paid and gave notice to the electricians that it was ending the payment stating that it would no longer form part of the employees' contracts of employment. The electricians argued that this variation was void and pursued claims for the travel allowance on the basis that not paying it was an unlawful deduction from their wages.

...

The electricians' claims failed as the employment tribunal held that the reason for the variation to their contracts was that the travel allowance was outdated and unjustified and, not related to the transfer. The tribunal's decision was upheld on appeal to the EAT.

This judgment is a reminder to employers that when making changes to an employee's terms and conditions after a TUPE transfer, a tribunal will consider what the reason for the changes are e.g. what caused the employer to do what it did? This case can be contrasted with the common situation where an employer wishes to harmonise the contractual terms of employees acquired as a result of a TUPE transfer with other staff on the employer's standard terms to ensure consistency of terms across the workforce. In such a scenario it is likely that an employment tribunal would conclude that the changes were void on the basis that the reason for the contractual variation was the TUPE transfer.

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Managing stress	Avoiding unfair dismissal	Data protection	Navigating the employment tribunal

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