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Employment Law

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When is it appropriate to suspend an employee?

The Court of Appeal has held that suspension did not need to be "necessary" for an employer to have reasonable and proper cause to suspend.

In *Agoreyo v London Borough of Lambeth*, Ms Agoreyo was a primary school teacher who was suspended, and resigned the same day, pending an investigation into three allegations of her using force to remove children with behavioural issues from the classroom. Ms Agoreyo brought a breach of contract claim on the basis that she had resigned in response to her employer's breach of contract, arguing that the act of suspension itself was a breach of the implied term of mutual trust and confidence.

As Ms Agoreyo had less than two years' qualifying service, instead of a claim in the employment tribunal for constructive unfair dismissal, she decided to pursue a breach of contract claim in the County Court. The County Court held that there was reasonable and proper cause to suspend Ms Agoreyo and dismissed the claim. Ms Agoreyo appealed to the High Court which overturned the decision on the basis that the employer had concluded that no more than reasonable force had been used and it was not necessary to suspend; suspension had been adopted as the default position and was a knee-jerk reaction. The employer launched a further appeal and the Court of Appeal restored the County Court's approach of assessing whether the employer had reasonable and proper cause to suspend when determining whether suspension amounted to a breach of the implied terms of trust and confidence.

This claim is a reminded to employers of the risk of adopting suspension as a default position or suspending without clearly identified reasons for doing so. Employers should be mindful that suspension is a significant step and is not, as is sometimes stated, a 'neutral act'.

Employment tribunal awards limit increases

The limits for tribunal awards and other amounts payable under employment legislation increased on 6 April 2019 for relevant events that occur on or after that date.

The maximum amount of a week's pay, for the purpose of calculating the basic award for unfair dismissal and a statutory redundancy payment increased to £525, and the maximum amount of the compensatory award for unfair dismissal increased to £86,444.

The maximum level of penalty that an Employment Tribunal can impose on an employer who repeatedly breaches their employment law obligations increased from £5,000 to £20,000.

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Does a compensatory rest break need to be a continuous period of 20 minutes?

The Court of Appeal have found that compensatory rest does not have to be in one continuous block of twenty minutes and can be made up of a series of shorter breaks.

In *National Rail Infrastructure v Crawford*, Mr Crawford, a railway signalman, worked eight-hour shifts covering various single-manned signal boxes. Even when trains were not due, he was required to continuously monitor the signals and remain on call. Mr Crawford was unable to take a twenty minute continuous rest break, however he was permitted to take a series of shorter breaks throughout his shift (albeit remaining on call) which amounted to over twenty minutes rest in total. Mr Crawford brought a claim under the Working Time Regulations on the belief that he was entitled to either a twenty minute rest break (under regulation 12) or compensatory rest (under regulation 24 (a)).

Network Rail appealed an earlier judgment of the Employment Appeal Tribunal who had found that short discontinuous periods of rest could not amount to compensatory rest and stated that it must be one continuous period of at least twenty minutes. The Court of Appeal overturned this decision and found that, so long as adequate compensatory rest had been provided, there was no requirement for this to be one continuous break of twenty minutes. They held that the obligation to provide compensatory rest, which is "equivalent" to a twenty minute rest break did not extend to a requirement for this to be "identical".

Although the Court of Appeal have found that compensatory rest need not be for one continuous period, it is a reminder that employers need to ensure that employees are able to take adequate compensatory rest which is equivalent to a twenty minute rest break. The approach taken by the Court here highlights that there is no 'one size fits all' approach to compensatory rest and that different approaches may be appropriate in different circumstances. It is important that employers consider the best approach for them and keep in mind whether the rest afforded to employees holds "equivalent" value in terms of contributing to employees' overall well-being at work.

Itemised payslips

New payslip requirements are now in force, requiring itemised calculations for variable rates of pay and hours worked. The requirement for payslips has also been extended to include workers in addition to employees.

From 6 April 2019, employees and workers, including those under casual or zero hours contracts, must receive correctly detailed, printed or electronic payslips.

The greater transparency is designed to help employees understand their pay and see if they are being paid correctly. Also, it is hoped that it will make it easier to identify whether employers are meeting their obligations under the National Minimum Wage and National Living Wage, and that holiday entitlements are correctly calculated.

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Brexit: settled status

The Brexit debate rumbles on in Parliament and dates and deadlines all appear subject to ongoing negotiations. But, for now, the pre-scheduled date of 30th March will open the door for applications from EU, EEA or Swiss citizens who have notched up five years of continuous residence in the UK to apply for settled status, in anticipation of the UK's eventual departure.

This will enable them to continue to live here after the end of the Brexit transition. Alongside, those who do not meet this requirement can apply for *pre-settled* status, allowing them to remain until they have accrued enough residency to be granted settled status.

While negotiations continue with the EU, the government has confirmed that if the UK leaves the EU without concluding a deal, EU/EFTA citizens and their family members already in the UK on that date would still be able to stay by applying under broadly the same terms of the current Settlement Scheme, but would need to do so by 31 December 2020.

Until employees have been granted settled or non-settled status, employers should continue to check the right to work on all current and prospective employees in the normal way.

This includes the changes introduced in January 2019, which allowed employers to rely on online checks to verify a person's right to work in the UK. The online right to work checking service covers those who hold a biometric permit or residence card, or status issued under the EU Settlement Scheme, as an alternative to viewing their passport or ID card.

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