

## Redundancy Defined

The Employment Appeal Tribunal (EAT) has recently considered whether employees can be dismissed by way of redundancy when the same employer makes an offer immediately to re-engage them on different terms and conditions.

In this case the Claimants were told in 2005 that changes would be made to their terms and conditions of employment. The Respondent attempted to do this by agreement with the Claimants' trade union. The changes were not agreed so the decision to terminate all of the employees' contracts and re-employ them on new terms and conditions was made. Those who had not accepted the new terms and conditions argued that they had in fact been dismissed due to a reduction of a 'particular type of work'.

The EAT held that in determining whether there had been a reduction in the need for the Claimants to do a 'particular type of work', it was sufficient to consider the generic type of job. In other words the fact that the Claimants continued to be employed as insurance salesmen, despite the variation of their terms and conditions, entitled the EAT to find that their jobs were still substantially the same.

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## A Right to Train

The Department for Innovation, Universities and Skills has launched a consultation on the proposed new right for employees to request time off for training. It is intended that employees will be given a legal right to ask to have time away from work to undertake relevant training. The only requirement would be that training should help improve business performance and productivity. Employers will be required to take seriously any requests for training that they receive.

## Age Discrimination & Retirement

In a preliminary opinion, the Advocate General of the European Court of Justice, appears to have indicated that the British provision allowing compulsory retirement at 65 is capable of being justified. If the whole Court agrees in a judgment expected in December, the English High Court will have to decide if the provision is, indeed, justified – watch this space...

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## National Minimum Wage When Sleeping

In the case of *Burrow Down Support Services v Rossiter*, the Employment Tribunal held that an employee who worked as a night watchman, who could sleep for much of his shift, using facilities provided for that purpose, was entitled to the national minimum wage for each hour of the shift. The employer claimed that the employee fell into the exception where an employee who is not working but is available for work is not entitled to the minimum wage. The Tribunal held that the employee was actually at work for the whole shift, even when sleeping.

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## Dependant's Leave

The case of *Cortest Limited v O'Toole* provides employers with clear guidance for dealing with an employee's statutory right to take emergency time off to look after dependants. In *Cortest* an employee had requested one to two months leave to care for his children due to a domestic crisis. The Employment Appeal Tribunal ruled that emergency leave is intended for just that - to cover emergencies allowing the employee to deal with an immediate crisis and set up alternative arrangements. It is not intended to cover situations where employees require substantial time off to care for dependants themselves.

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## Job Adverts

For anyone needing an extra pair of hands this autumn, it is important to consider that due to a recent European Court of Justice ruling, discriminatory job adverts amount to direct discrimination.

A Belgian company stated that it would not employ "immigrants" because its clients did not like to deal with them. This was held to be direct discrimination on grounds of race. The ruling overturns the previous UK position in *Cardiff Women's Aid v Hartup 1984* which held that job advertisements fall outside discrimination legislation and that individuals could not bring a claim.

If an advertisement sets a presumption that suggests that the employer's recruitment process is in some way unfair or discriminatory, it will then be up to the advertiser to prove otherwise.

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## Religious Discrimination

An Employment Tribunal has awarded a Muslim woman £4,000 for injury to feelings after she was turned down for a job because she wore a headscarf. The claimant had applied for a job as a stylist in a hair dressing salon. She failed in her claim for direct discrimination. The Tribunal was satisfied that the respondent would have treated a woman who, whether Muslim or not, and for a reason other than religious belief, wears a hair covering at all times when at work. Nevertheless, she succeeded with her indirect discrimination claim.

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## National Minimum Wage

On October 1<sup>st</sup> 2008 the National Minimum Wage rose again to £5.73 for adults aged 22 or above, to £4.77 for workers aged 18 to 21 and to £3.53 for under 18s



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## Requirements of Step One Grievance are minimal

The EAT has recently considered, once again, whether the requirements of the Statutory Grievance Procedure (SGP) had been complied with from the Claimant's point of view with regard to Equal Pay Claims.

The EAT have now stated in the case of *Riley v First Choice Homes Oldham Ltd* that a letter setting out an equal pay complaint under Step 1 of the modified grievance procedure must set out the basis of the grievance on which the claim is founded in sufficient detail to enable the employer properly to address it.

It is also important to remember that a woman's successor in a job cannot be used as a comparator for the purposes of an equal pay claim, either under the Equal Pay Act 1970 or Article 141 of the EC Treaty.

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## When is Victimisation not Victimisation?

The answer is... when an employee seeks to harass his employer and is dismissed for bringing claims against the employer in the Employment Tribunal that are not bona fides.

The Employment Appeal Tribunal has held that dismissing an employee for making numerous claims of race discrimination against his employer and other work colleagues (all but one of which were unsuccessful), in an effort to harass the employer into offering him money by way of a settlement, does not amount to victimisation by the employer under the race relations legislation.

The victimisation provisions in the Race Relations Act are designed to protect bona fides claims only. So said a remarkably sensible judge in the EAT when deciding the case of *HM Prison Service and others v Ibrimudum 2008*

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These notes are for guidance purposes only. We believe the contents to be correct but it should not be taken as accurate or full to apply to specific situations without first referring to us. Please feel welcome to call the office and speak to one of our employment team who will be willing to assist with any queries you may have.

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