



RMI Employment Law Newsletter

In this bulletin, MILS aims to keep you up to date on some of the latest developments in employment law, highlighting some key areas of change for motor industry employers.

Legislation

- **Draft Finance Bill 2017**

On 5th December 2016, HMRC published draft clauses for the Finance Bill 2017. Key points of interest for employers include changes to the taxation of termination payments, restrictions to salary sacrifice benefits and the removal of the tax relief associated with employee shareholder status. The draft legislation is open to consultation until 1st February 2017 and the final contents of the Bill will be confirmed in the Spring 2017 budget. The aim of consultation is to ensure that the legislation works as intended. We will report on this further in due course.

- **Final Gender Pay Gap Regulations published**

The final version of the Gender Pay Gap Regulations, which come into force on 6th April 2017 was finally published on 6th December 2016 setting out how employers should calculate and report on the gender pay gap within their business from April 2017. The final regulations clarify some points such as: who is in scope; how to calculate pay and reporting obligations on bonuses.

What must employers publish?

In brief, under the Regulations employers will be required to publish the following:

1. The difference between the median and mean hourly rate of "full pay" for male and female relevant employees during the relevant pay period (which will include a pro rata proportion of any bonus paid in any relevant pay period);
2. The difference between the median and mean bonuses paid to male and female relevant employees in the year ending with the new snapshot date;
3. Proportions of male and female relevant employees who received a bonus; and
4. Proportions of male and female relevant employees in each pay quartile.

How will the regulations be enforced?

The previous draft had been criticised for having a lack of enforcement powers. The notes that accompany the new draft regulations now suggest any employer's failure to comply with their obligations under the regulations will amount to an "unlawful act" and under

which the Equality and Human Rights Commission (EHRC) could potentially take action. However, it is still not clear how much enforcement EHRC will actually implement due to a lack of resources.

- **Modern Slavery Bill 2016 progresses to House of Commons**

The Modern Slavery Bill 2016 requires both commercial and public organisations to include a statement on slavery and human trafficking in their annual report. The Bill has now undergone all three readings in the House of Lords and had the first reading in the House of Commons on 30th November 2016. The second House of Commons reading was scheduled for 13th January 2017 with hopes that the Act will receive Royal assent later in 2017.

Recent case law developments

- **Disability: long term stress**

Does long term stress amount to a disability?

In the case of *Herry v Dudley MBC* the Employment Appeal Tribunal (EAT) said no, not without something else. In this particular case, the Claimant failed to establish a mental impairment or to show substantial impact, presenting little or no evidence that the stress had any impact on normal day to day activities. Conducting litigation or giving evidence at an employment tribunal were not considered to be normal day to day activities because they do not affect participation in professional life. Whilst again this case gives employers some comfort, each case will obviously turn on its own facts and it may be that in some cases stress does indeed amount to a disability within the meaning of the Equality Act.

- **Medical evidence not required for personal injury awards in Tribunal**

The EAT has also recently held that a suspension meeting amounted to an act of unlawful discrimination because of the manner in which it was conducted. This was in the case of *Hampshire County Council v Wyatt*. The EAT held that whilst it is advisable for claimants to obtain medical evidence of personal injury in such claims, there is no legal principle preventing an award from being made in the absence of expert medical evidence. Employers should therefore ensure that communications around suspension are always handled with sensitivity to the employee's needs. The Claimant in this case was dyslexic and the employer failed to make reasonable adjustments by explaining matters carefully and slowly. As such, she did not understand the meeting and was under the impression she was losing her job because of the dyslexia.

In the News

- **Businesses unaware employment tribunal verdicts will be made public in 2017**

Most employers have yet to consider major implications in the reporting of employment tribunal verdicts, and we anticipate companies could feel compelled to settle out of court, or might even introduce blacklists of litigants, as a result. Any member of the public will be able to search on line for tribunal judgments, by company name or topic, from a yet to be determined date in early 2017. At present, judgments are only available by request or in person from HM Courts and Tribunal Service (HMCTS). It will only apply to judgments this year when the system goes live.

There is real concern that employers may fear significant brand and reputational damage from verdicts being made available. This development is clearly something employers will have to bear in mind when deciding whether to consider comprising or settling potential or actual claims.

Guidance

- **Consultation on work, health and disability**

The Government has launched a consultation on work, health and disability as part of the Improving Lives Green Paper. Its aim is to better understand why a disabled person and those with long term health conditions are less able to acquire and keep jobs. The Government wants to acknowledge the wide range of experiences which these individuals face and how best to improve the system to enable them to work. There are fewer than 5 and 10 disabled people in employment, compared to 8 in 10 non disabled people.

- **New ACAS guidance on anxiety and seasonal issues**

ACAS has published new guidance on anxiety for managers and employees which gives top tips on how to handle mental health in the workplace. Managers should be properly trained with the skills they need to support staff that may be experiencing anxiety at work. The advisory body has also produced guidance on winter workplace issues for employers, which includes advice on whether there is a requirement to pay staff if they can't come to work because of flooding or snow. For further details, please refer to the ACAS website.