



RMI Employment Law Bulletin Summer 2017

Welcome to the RMI Employment law email bulletin. Although the bulletin is not intended to provide a comprehensive summary of all the changes to the law, in this bulletin MILS aims to keep you up to date on some of the latest developments in employment law and to highlight some key areas of change for motor industry employers.

Legislation

• Annual Compensation Increase

The following increases in compensation payments will apply to dismissals (or detriments, etc) occurring on or after 6 April 2017:

- An increase to the limit on compensation for unfair dismissal from £78,962 to £80,541.
- The limit on a week's pay for the purposes of calculating, among other things, statutory redundancy payments and the basic award for unfair dismissal, will increase from £479 to £489.
- Guarantee pay will increase from £26 to £27 per day.
- The minimum basic award in cases where a dismissal is unfair by virtue of health and safety, employee representative, trade union or occupational pension trustee reasons will increase from £5,853 to £5,970.

• New National Minimum Wage Rates Published

The draft National Minimum Wage (Amendment) Regulations 2017 were published on 1 February 2017 and have proposed to change the rates of the National Minimum Wage in accordance with recommendations from the Low Pay Commission. According to the draft regulations, the following hourly rates of National Minimum Wage will apply from 1 April 2017:

- The National Living Wage (workers aged 25 and over) is £7.50.
- The standard adult rate (workers aged between 21 and 24) is £7.05.
- The development rate (workers aged between 18 and 20) is £5.60.
- The young workers rate (workers aged under 18 but above the compulsory school age who are not apprentices) is £4.05.
- The rate for apprentices is £3.50.

Case law developments

• Self-employed plumber found to be a worker

Continuing the focus on employment status, the Court of Appeal has upheld a tribunal decision that a plumber who was held out as being self-employed was nevertheless a “worker” and able to claim for unpaid holiday and also an “employee” for the purpose of discrimination protection. The case is called *Pimlico Plumbers and Charlie Mullins v Gary Smith*.

This case is likely to become a leading case on employment status in future years and puts the spotlight on a business model under which operatives are intended to appear to clients of the business as working for the business but at the same time the business itself seeks to maintain that there is a legal relationship of independent contractor rather than employer and employee or worker.

- **Uber appeals against a ruling that its UK drivers are workers**

Members will have seen this case widely reported in the press but an official Notice of Appeal has now been lodged detailing the reasons why Uber believe the Tribunal have erred in their decision to class their drivers as “workers”. It will be a case of “watch this space” in relation to how this case turns out. Uber also disputes how the claimants’ working time should be calculated for the purpose of the National Minimum Wage Regulations.

- **Lock v British Gas Holiday Pay Commission Case**

We should remind members that British Gas has been refused leave to appeal by the Supreme Court in the long running case regarding the payment of commission during holidays.

In *Lock v British Gas Trading Limited [2014] IRLR 648 ECJ*, the ECJ ruled that a worker’s commission payment must be included in the calculation of his or her holiday pay. This decision was subsequently upheld by the UK Court of Appeal in October 2016 which held that holiday pay must include compensation for any results-based commission that would ordinarily be earned by a worker.

The refusal for leave to appeal by the Supreme Court now finally brings the legal case to a close, for now at least.

- **Unfair dismissals following the exercise of a mobility clause in a redundancy situation**

In the case of *Kellogg Brown & Root (UK) Limited v Fitton & Ewer*, two employee claimants were successful in bringing a claim against their employer for unfair dismissal following an unreasonable request to relocate workplace. The claimants’ employer had relied on a mobility clause in the employment contracts to instruct the claimants to work at a different location following the shutdown of their usual workplace. Such relocation would have resulted in an increase of twenty to thirty hours per week of commuting time and so, despite the employer proposing various measures to assist relocation, the employees refused to relocate. The employer dismissed the employees for failing to comply with a reasonable management instruction. The Employment Tribunal found the dismissals to be unfair and by reason of redundancy. On appeal, it was held that, in fact, the employees had been unfairly dismissed by reason of misconduct. The mobility clause was judged to have been too widely drafted to be lawfully relied upon. It proposed that the employee was willing to work anywhere in the UK or overseas and that was found to be too wide.

This case brings into focus the need to ensure that mobility clauses need to be tightly drafted if they are to be enforced.

- **Disability discrimination**

Can a claimant successfully claim harassment by simply asserting that he/she has a disability without establishing that he/she is disabled under the Equality Act 2010? No, held the Employment Appeal Tribunal in the case of *Peninsula Business Services v Baker*. Overturning the Tribunal's original decision, the Employment Appeal Tribunal held that discrimination protection is not available to those who merely assert a disability. The protection only applies to those who actually have a disability, to those associated with a disabled person or to those who are wrongly perceived to be disabled.

In the News

- **Lack of awareness about Apprenticeship Levy**

According to reports from the BBC, a third of employers liable to pay the incoming Apprenticeship Levy do not know of its existence. Of those who were aware of the changes, many have expressed the view that this levy will encourage them to hire more apprentices. As an employer, you will have to pay Apprenticeship Levy each month from 6th April 2017 if you:

- Have an annual pay bill of more than £3 million.
- Are connected to other companies or charities or Employment Allowance which in total have an annual pay bill of more than £3 million.

Guidance

- **New ACAS Guidance on Gender Pay Gap Reporting**

As explained in previous articles, the Gender Pay Gap Regulations will introduce mandatory gender pay gap reporting for private sector employers who have 250 or more employees on 5th April 2017. Affected employers will be required to publish annual information on their gender pay gap with the first reports due by the 4th April 2018. Broadly speaking, there are six different sets of data which need to be published.

- **ET Fees Review – Government Review of Employment Tribunals Fees now published**

Fees were introduced for proceedings in the Employment Tribunals and the Employment Appeal Tribunal in 2013. There has been a significant decrease in claims since then, however the main objectives of introducing the fees have been met, in particular the advantages of using ACAS's free conciliation service. Evidence to support the fact that some people found the fees off-putting initiated the Government's review of their current scheme and the relaunching of the remission scheme as "help with fees" with improved guidance and a simplified application procedure. The review sets out a proposal for widening access to the fee remission scheme by raising the income level at which claimants can receive fee commission. In summary, the Government concludes that "whilst there is no clear evidence

that ET Fees have discouraged people from bringing claims, there is no conclusive evidence that they have been prevented from doing so". Whether any possible changes to the current system result in a higher number of claims being lodged only time will tell.

- **Employment Status remains in the limelight**

In a topical review of issues affecting the "gig" economy, the Department for Business, Innovation & Skills has published its long awaited Employment Status Review. Although it is dated December 2015 it has only recently been published to help inform the Taylor Review of modern employment practices. It lays out employment status and the system defining it as it stands today. The review considers the position of some atypical workers. Whilst the review examines future possible reforms, it fails to make any recommendation. The Taylor Review, which examines modern employment practices, is expected to be published later this year, with hopes from legal commentators that it will provide or suggest some proactive steps for reform.

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Motor Industry Legal Services

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