



RMI Employment Law Winter 2017 Bulletin

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

Legislation

- New leave allowance for grieving parents

A Bill has been published today which will entitle parents who lose a child under the age of 18 to two weeks' paid leave. Currently, whilst employers are expected to be understanding and flexible, there is no legal obligation to allow parents paid time off to grieve.

[The Parental Bereavement \(Pay and Leave\) Bill](#) will entitle all employees to parental bereavement leave, regardless of their service length. Those who have 26 weeks' continuous service will also benefit from statutory parental bereavement pay, the cost of which employers will be able to recover from the Government.

Comment

This would appear to be a commendable addition to the law, from the Government anxious to prove its credentials as a Government for the working masses.

- Data Protection Bill: summary of main provisions

The Data Protection Bill had its first reading in the House of Lords on 13 September 2017. A second reading including general debate on all aspects of the Bill is scheduled in October 2017.

The Bill will repeal and replace the Data Protection Act 1998 and provide "a comprehensive and modern framework for data protection in the UK". The Bill supplements the General Data Protection Regulation ((EU) 2016/679) (GDPR) which becomes directly applicable in member states on 25 May 2018.

When the UK leaves the EU, the Bill allows for the continued application of GDPR standards and the GDPR will be incorporated into the UK's domestic law under the European Union (Withdrawal) Bill currently before parliament.

The Bill also implements the Law Enforcement Directive ((EU) 2016/680) and introduces a distinct regime for national security data processing.

The Bill is intended to ensure that UK and EU data protection regimes are aligned post Brexit. The aim is to demonstrate that the UK is an adequate jurisdiction for EU data and so achieve uninterrupted data flows once the UK has left the EU. The Bill is liable to change during the parliamentary process and it will be interesting to see the outcome of the debate in the House of Lords.

Comment

Many in the motor industry are trying to prepare for the GDPR in May 2018. Whilst advanced planning is to be applauded, many lawyers are finding definitive advice problematic until the final form of the law is known and guidance is issued.

Case law developments

- Early conciliation certificate could name two respondents

The Employment Appeal Tribunal (EAT) has held that a single ACAS early conciliation (EC) certificate could name two separate respondents. The claimant had commenced EC using one form for both respondents, in breach of the Employment Tribunals (Early Conciliation: Exemption and Rules of Procedure) Regulations 2014. ACAS did not reject the form and proceeded to issue an EC certificate which named both respondents.

Unlike the requirement to use different forms for separate respondents, there is no similar rule in relation to the EC certificate. The claimant had received a certificate naming both respondents and this was sufficient for the purposes of section 18A(8) of the Employment Tribunals Act 1996. The employment tribunal was not entitled to examine the process prior to the grant of the EC certificate.

- Tribunal cases on fees

Whilst lawyers await clearer guidance from the Government and the tribunals regarding the process for reclaiming fees, inevitably first decisions from tribunals are coming through the system:

1. In *A v B*, Employment the Judge declined to order that the respondent should pay the successful claimant's fees, on the basis the claimant would soon be able to recover the fees from the Government and thus there was no purpose in ordering the respondent to indemnify him.

2. A few weeks ago, it was reported that a tribunal had extended time on the 'just and equitable' basis because the ET1 was late due to the claimant's inability to pay fees. The tribunal's reasons are now available, and in fact the decision in *Dhami v Tesco Stores* said nothing of the sort; although the Judge acknowledged the argument that time should be extended because of an inability to pay the fees, the decision to extend time was granted on different grounds (ill health of the claimant, and a lack of clarity over the date of dismissal).

Guidance

- ACAS publishes new mental health guidance

ACAS has published guidance to assist employers in supporting staff with mental health issues. The guidance suggests how employees might spot signs of mental ill-health and provides employers with a number of recommendations on how to discuss mental health at work. It recommends that employers should remain "open minded and prepared for the unexpected" and suggests measures to enable employees to return to work smoothly.

The new guidance follows the publication of a recent survey indicating that while employers are doing more to tackle the mental health issues of workers, they would be receptive to more training and guidance.

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Motor Industry Legal Services (MILS Solicitors) provides fully comprehensive legal advice and representation to UK motor retailers for one annual fee. It is the only law firm in the UK which specialises in motor law and motor trade law. MILS currently advises over 1,000 individual businesses within the sector as well as the Retail Motor Industry Federation (RMI) and its members.