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EMPLOYMENT REVIEW

Your quarterly legal bulletin on Employment Law news from Allan Janes Solicitors

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Mother suffered discrimination after part-time return from maternity leave

The Equality Act 2010 makes it unlawful to discriminate against or treat a woman unfavourably because of her pregnancy, or because she has given birth recently, is breastfeeding or is on maternity leave. In addition, the Employment Rights Act 1996 and the Maternity and Parental Leave etc. Regulations 1999 protect employees from unfair dismissal and detrimental treatment on the grounds of pregnancy, childbirth or maternity leave.

Many mothers return to work on a part-time basis after having children and employers must be very careful to ensure that they are not subjected to any unfair detriment. In one case *(Fidessa plc v Lancaster)*, a woman won the right to substantial compensation after her return to the office was blighted by less favourable treatment.

Ms Lancaster had worked for Fidessa plc, which develops and supplies software for financial services companies, since 5 July 2010 as an engineer in the Connectivity Operations Team. On returning from maternity leave, she was made redundant after her manager reneged on an agreement that she would be permitted to leave at 5:00pm each day in order to pick up her child from nursery. A new role within the company that she could have applied for as an alternative to redundancy was subject to a requirement that she remain at work after 5:00pm.

She brought complaints of direct and indirect sex discrimination, harassment, less favourable treatment as a part-time worker and unfair dismissal.

Although rejecting a number of her complaints of less favourable treatment, an Employment Tribunal (ET) found that she had suffered indirect sex discrimination, less favourable treatment and harassment – when she learned that a manager had allegedly responded to the news of her pregnancy by making a wholly inappropriate remark – as well as less favourable treatment as a part-time worker. Although the redundancy process was not a sham, the ET also ruled that her dismissal was unfair, having been tainted by discrimination.

In rejecting the company's appeal against those findings, the Employment Appeal Tribunal could detect no flaw in the ET's approach. However, the company's challenge to the ET's finding of direct sex discrimination and harassment, which related to the sexist remark said to have been made by the manager, was upheld. The reasoning in support of that finding was deficient and the issue was sent back to the same ET for reconsideration.

It is important to have systems in place to ensure that the rights of women on maternity leave and those returning after the birth are not infringed. For advice on any of the topics covered in this newsletter or on any other employment law matter, please contact Clive Hitchen, our Employment Specialist on email: clive.hitchen@allanjanes.com or call 01494 521301.

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Annual inflation-linked changes in Tribunal Awards

The Employment Rights (Increase of Limits) Order 2017, which details the annual inflation-linked changes in limits on the compensation amounts which can be awarded by an Employment Tribunal (ET), applies where the appropriate date falls on or after 6 April 2017.

The main changes are:

- The maximum amount of a week's pay for the purpose of calculating a redundancy payment, or for various awards including the basic or additional award of compensation for unfair dismissal, increases from £479 to £489. The maximum award of an employee's statutory redundancy pay therefore increases from £14,370 to £14,670;
- The minimum amount of compensation where an individual is found to have been unlawfully excluded or expelled from a trade union increases from £8,939 to £9,118; and
- The statutory maximum compensatory award for unfair dismissal increases from £78,962 to £80,541.

There is no statutory cap on the amount an ET can award in discrimination cases.

COT3 agreements – watch the wording

The case of *Department for Work and Pensions v Brindley* illustrates that care must be taken over the wording used to record the terms of settlement of an employment claim – or potential claim – on a form COT3 or in any settlement agreement to ensure that it has the intended effect.

Mrs Brindley claimed that she had been discriminated against by her employer, the Department for Work and Pensions (DWP), on the grounds of her disability after she was denied a disabled parking space following a reorganisation. She said that the stress of not being able to park at her place of work made her condition worse and was the reason for her subsequent sickness absence. When she was given a final written warning she commenced Employment Tribunal (ET) proceedings. In December 2014, a form COT3 was signed in settlement of Mrs Brindley's claim 'and all other relevant claims arising from the facts of the proceedings up to and including the date of this agreement'.

In June 2015, Mrs Brindley presented a further claim that in subjecting her to its attendance management policy and procedures, specifically by issuing her with a second final written warning in November 2014 for poor attendance, the DWP had again discriminated against her on the grounds of her disability. The DWP argued that her claim was barred by the December 2014 settlement agreement.

On examining the wording of the COT3, the ET found that it did not say that the 'relevant claims' included 'all or any claims arising within the period' up to the date on which the COT3 was signed, nor did it refer to 'all other relevant employment claims'. It qualified 'all other relevant claims' with the words 'arising from the facts of the proceedings'.

In the ET's view, the first claim related to the provision of car parking and the first final written warning and the second claim related to the specific matters that led to the second final written warning under the DWP's attendance management policy.

The Employment Appeal Tribunal upheld the ET's ruling. The COT3 could not be read to mean that it covered any action taken by the DWP up to the date the agreement was signed.

If a settlement agreement is intended to preclude any future claims, the language used must leave no room for doubt that this is what the parties intend. We can advise you on negotiating such agreements with employees and on their wording.

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