

EMPLOYMENT REVIEW

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

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Morrisons held vicariously liable for rogue employee's data leak

In a workplace context, an employer can be found liable for the acts or omissions of its employees, provided it can be shown that they took place in the course of their employment – i.e. where there is sufficient connection between the employee's position and the wrongful conduct to make it right for the employer to be held responsible.

In the first class action in the UK arising from a data leak (*Various Claimants v WM Morrisons Supermarket plc*), the High Court has ruled that an employer can be held liable for the criminal actions of a rogue employee in breach of the Data Protection Act 1998 (DPA).

The data in question was leaked by an IT specialist who worked for Morrisons as a senior internal auditor. He bore a grudge against the supermarket chain after an unrelated incident that had resulted in disciplinary action. He had access to the company's personnel files as employees' payroll data was needed for an audit. He later copied



details – including names, addresses, dates of birth, telephone numbers, bank details and salaries – of almost 100,000 of his fellow workers and placed them on a file-sharing website.

He was subsequently identified and convicted of offences under the Computer Misuse Act 1990 and the DPA. He was given an eight-year prison sentence.

In determining the damages claim brought by the affected members of staff, the Court found that Morrisons had in place internal checks and had taken appropriate steps to protect the data by limiting access to a few trusted employees. When the supermarket chain learned of the leak, it had taken swift and effective steps to remove the data from the Internet. There was no way it could have known of the IT specialist's intentions and there had been no failure to provide adequate and proper controls. The company's sole failing was that it did not have an organised or failsafe system in place for the deletion of data stored on individual workers' computers.

Nevertheless, the Court found Morrisons indirectly – or vicariously – liable for the IT specialist's criminal acts on the ground that there was a sufficient connection between his job and his wrongful conduct to justify such a finding.

The Court's ruling has opened the way for the claimants to seek compensation. However, in granting Morrisons permission to challenge its decision before the Court of Appeal, the Court noted that the company was itself the primary target and victim of the embittered IT specialist's actions. The result of the case could be viewed as the Court acting as a 'witting instrument of the criminal' in the furtherance of his criminal objectives.

The General Data Protection Regulation, which comes into effect on 25 May 2018, imposes additional data protection obligations on employers. One significant change is the introduction of the 'accountability principle', whereby data controllers will have a duty to keep records to demonstrate how they comply with the data protection principles – for example by documenting the decisions taken about a processing activity. This will include proving that access to data is restricted to only those personnel necessary and that data is deleted when it is no longer needed.

Please contact Charlotte Braham on charlotte.braham@allanjan.es.com who can assist you in preparing for the changes this will entail.

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New National Minimum Wage rates

The Government has accepted the Low Pay Commission's recommended rates for the National Living Wage (NLW) and the National Minimum Wage (NMW) that will come into effect on 1 April 2018:

- The NLW, which applies to those aged 25 and over, will increase from £7.50 to £7.83 per hour;
- The NMW for 21- to 24-year-olds will increase from £7.05 to £7.38 per hour;
- The NMW for 18- to 20-year-olds will increase from £5.60 to £5.90 per hour;

- The NMW for 16- and 17-year-olds will increase from £4.05 to £4.20 per hour; and
- The apprentice rate of the NMW, which applies to apprentices aged under 19 or those aged 19 or over and in the first year of their apprenticeship, will increase from £3.50 to £3.70 per hour.

The accommodation offset will increase from £6.40 to £7.00 per day for each day during the pay period that accommodation is provided.

Employees' annual leave entitlement – 2018/2019

The minimum paid annual holiday leave entitlement under the EU Working Time Directive is 20 days (four weeks). However, under the Working Time Regulations 1998 (WTR), full-time workers in the UK are entitled to 28 days' (5.6 weeks') paid annual leave. This can include bank holidays, of which there are usually eight per year.



However, because Easter is a 'moveable feast', in the 12 months that run from 1 April 2018 to 31 March 2019 there are only seven bank holidays. This is because Good Friday falls on 30 March in 2018 and on 19 April in 2019.

Employers whose holiday year runs from April to March are advised to check employees' contracts of employment to make sure the wording is not in breach of the WTR. This could occur if the contract states that the employee's paid annual leave entitlement is 20 days plus bank holidays, as the total for the year in question would be less than the 28-day statutory minimum. A contract which states that the employee is entitled to 28 days including bank holidays will not be in breach of the WTR.

Contact Charlotte for advice on agreeing variations to employees' contract terms on charlotte.braham@allanjan.es.com

Parental Bereavement Bill published

Under the law as it stands, employers are not required to give paid leave to grieving parents. Section 57A(1) of the Employment Rights Act 1996 gives employees the right to take a reasonable amount of time off to take action which is necessary for dependants – for example, if they are ill or injured – and Section 57A(1)(c) of the Act specifically refers to action which is necessary 'in consequence of the death of a dependant'.

In a 2004 case (*Forster v Cartwright Black Solicitors*), the Employment Appeal Tribunal ruled that Section 57A(1)(c) does not cover sickness absence due to grief. The relevant wording of the Act refers to the numerous arrangements that have to be made when someone dies, such as registering the death, making funeral arrangements, applying for a grant of probate, etc. It does not extend to compassionate leave as a result of bereavement.

In July 2017, a Private Members' Bill, the Parental Bereavement (Leave and Pay) Bill 2017-19, was introduced into Parliament by Kevin Hollinrake MP. The Bill, which has now been published, is being supported by the Government and received its second reading in Parliament on 20 October 2017.

Scheduled to come into force in 2020, the Bill will give employees who lose a child under 18 the right to two weeks' paid leave.

Employees who lose a child will also be entitled to statutory parental bereavement pay if they have at least 26 weeks' continuous service. Employers will be able to recover some or all of the cost of this from the Government.

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