

A photograph of three business professionals (two men and one woman) sitting around a table in a modern office or meeting room at night. They are looking at laptops and talking. The room has large windows showing a city skyline at night. The lighting is warm and focused on the people.

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Power Hour: Case Law, Legislation and Recent Developments

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7th April 2022

Agenda

- Annual Changes
- Key Case Updates
- Key legislative changes
- Horizon scanning

Annual Changes

Vento Bands

- Awarded for “injury to Feelings”
- New Rates for Claims presented after 6 April 2022
- Three Bands:
 - Lower band £990 to £9,900
 - Middle band £9,900 to £29,600
 - Upper band £29,600 to £49,300
- Exceptional cases: £49,300+
- Vulnerability, distress, seriousness of acts complained of

National Minimum Wage

	Rate from April 2022	April 2021 to March 2022 Rate	Increase
National Living Wage	£9.50	£8.91	6.6%
21-22 Year Old Rate	£9.18	£8.36	9.8%
18-20 Year Old Rate	£6.83	£6.56	4.1%
16-17 Year Old Rate	£4.81	£4.62	4.1%
Apprentice Rate	£4.81	£4.30	11.9%
Accommodation Offset	£8.70	£8.36	4.1%

Family Friendly Rights and SSP Rates

- Statutory Maternity, Paternity, Adoption leave, Parental Bereavement and Shared parental pay
- £156.66 per week (Previously £151.97)
- Lower earning limit rise from £120 to £123
- Statutory Sick Pay £99.35 (previously £96.35)

Legislation update

IR35 extension: Private Sector

- Concerns contractors performing similar role to employees, via Personal service companies (PCS)
- Contractors to be treated (for tax purposes) as employees
- Responsibility shift from contractor to employer
- Public Sector in 2017
- Private Sector April 2021



Health and Safety Protection: Workers



- The Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order
- Workers protected from detrimental treatment
- Extension of Section 44, Employment Rights Act 1996
- High Court Challenge, IWGB (Gig workers union)
- Government failure to implement EU Health and Safety Framework Directive

Temporary Changes to SSP

- Self Certification period extended to 28 days
- Absences between 10 December 2021 to 26 January 2022
- 7-day self certification rule restarts 27 January 2022

Case law Update



Worker Status

- Workers Receive: National Minimum Wage, Holiday pay, whistleblower protection, Working Time Regulations 1998, Health and Safety protection
- *Nursing and Midwifery Council v Somerville [2022] EWCA Civ 229*
- *Johnson v Transopco UK LTD EA-2020-000780*, driver working via “mytaxi” app not a worker.

Collective Bargaining

- *Kostal Ltd v Dunkley UKSC 2019/0153*
 - Collective bargaining agreement in place
 - Direct offer to employees unlawful
 - Supreme Court, employers must:
 - Exhaust collective bargaining procedure;
 - Genuinely believe collective bargaining procedure has been exhausted;
and
 - Have evidence of this genuine belief.

Contract Terms

- *Amdocs Systems Group Ltd v Langton [2021] UKEAT*
 - Transferee employer liable for income protection payments (IPP) and 5% per year “escalator”
 - 5% escalator had ceased to be offered in 2008 by insurer
 - ET and EAT found the term was contractual and could not be withdrawn
 - Found the terms had transferred from one employer to another

Media Access to Tribunal Documents

- *Guardian News & Media v (1) Rozanov; (2) EFG Private Bank Ltd [2022] EAT 12*
 - Case concerned opened justice principle
 - Journalist request for documentation cited in judgment
 - Tribunal's decision that cost and inconvenience outweighed open justice principle
 - Employment Appeal Tribunal called decision perverse
 - Example that documents used in a Tribunal hearing may be available for journalists to both access and request even after the hearing has concluded

Discrimination

- *Allay (UK) Ltd v Gehlen UKEAT/0031/20/AT*
 - Defence for employers to show they have taken proactive steps to prevent discrimination
 - Employer had an equality and diversity policy
 - Employer had provided training
 - Neither step repeated or refreshed in previous 18 months
 - Tribunal determined employer had not taken “all reasonable steps”.
 - Policies and training were “stale”
 - EAT emphasised need for regular reminders and updates (refreshers)

Discrimination

- *Rooney v Leicester City Council EA-2020-000070-DA*
 - Concerned employee suffering menopausal symptoms
 - EAT held ET was wrong to conclude that she was not potentially disabled for the purposes of the Equality Act 2010
 - Potential for symptoms to sufficiently severe and long term enough (last or likely to last 2 months or more)

Equality Law

To Belief or not to Belief

What is Religion or Belief

- Section 10 Equality Act 2010
- “**Religion**” – means any religion, including lack of religion
- “**Belief**” – means any religious or philosophical belief or lack of belief

What is a belief?

- *Grainger PLC v Nicholson UKEAT/0219/09*
 - Belief must be genuinely held
 - Must be a belief not an opinion or viewpoint
 - Belief as to a weighty and substantial aspect of human life and behaviour
 - Must have certain level of cogency, seriousness, cohesion and importance
 - Worthy of respect in a democratic society,
 - Must not be incompatible with human dignity
 - Must not conflict with the rights of others

Belief or not to believe

- *Walters v Department for work and Pensions 2401910/2019*
 - Dismissal for tweet comparing migrants to terrorists
 - Breach of civil service code and departmental standards of behaviour
 - Claimed discrimination on the basis of her national views and opposition to political correctness

Belief or not to believe

- *Sleath v West Midlands Trains Ltd 1310379/2020*
 - Secular atheism
 - Facebook post from employee stating “*we cannot let our way of life become like some sort of Muslim alcohol-free caliphate*” triggered debate with other comments from him
 - Employee claimed he believed in secular atheism, where all political and religious beliefs can be expounded and where freedom of speech exists

Belief or not to believe

- *Charalambous v Barnsley College 1802552/2021*
 - Objection to Black Lives Matter (BLM) Movement
 - Claimant objected to college's support for BLM
 - Claimed discrimination because of:
 - His lack of belief in BLM
 - His belief the college should not support a political movement
 - Court examined whether BLM is a protected belief

Belief or not to believe

- *Embery v Fire Brigades Union 2203219/2019*
 - Concerned belief in Brexit (“*national independence*”)
 - Employee criticised the FBU’s anti-leave stance in lead up to Brexit vote
 - Stated he believed in “*national independence*”

Belief of not to believe

- Maya Forstater UKEAT/0105/20/JOJ
 - Non-renewal of contract with Centre for Global Development
 - Posted a series of tweets
 - Gender critical belief
 - Expect appeals in relation to this to higher courts

Horizon Scanning

- Key Legal Changes

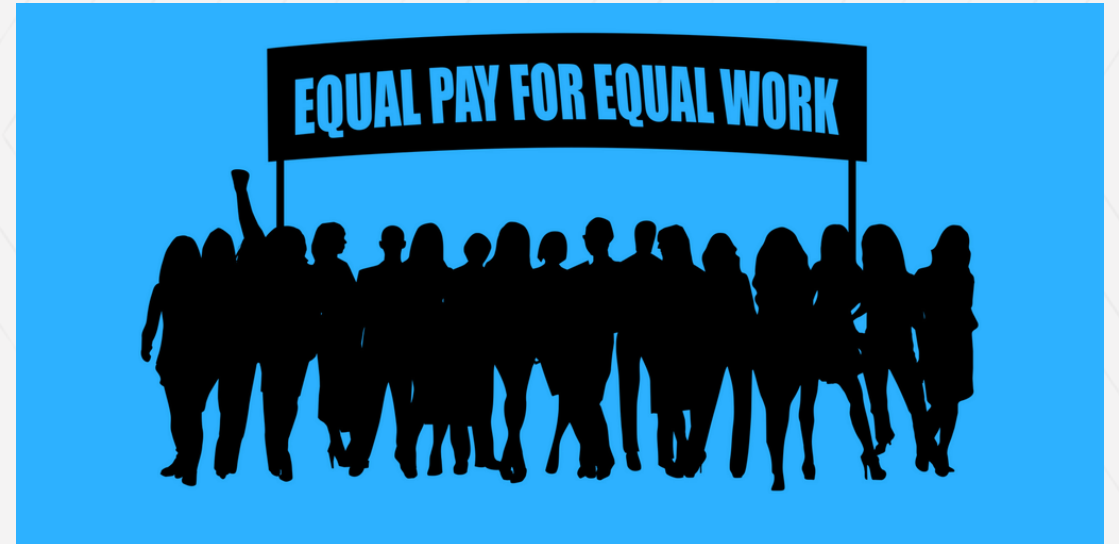


Upcoming Employment Law Cases

- *Harpur Trust v Brazel UKSC 2019/0209*
 - Supreme Court Decision Expected
 - Decision regarding part-year workers holiday pay calculations
 - 12.07% of hours worked vs last 12 weeks actually worked
 - Expect holiday pay claims from part time employees

Upcoming Employment Law Cases

- Equal Pay Claims
 - Claims against ASDA, Tesco, Morrisons, and other retailers continue
 - First stage cleared for many i.e. they can compare store workers to depot workers
 - Focus now on whether type of work was of “equal value”
 - Examination of whether differences in pay was “justified”



Potential Legal Changes

- Duty to prevent Sexual Harassment
- Legislation on Confidentiality clauses
- Redundancy Protection for new parents
- Legislation on “Tips”



Potential Legal Changes

- Employment Status Law
- Rights for Zero Hour Workers
- Carer's leave rights
- Fire and Re-hire

P&O Cruises

- 800 crew dismissed with immediate effect
- “Redundancy” given as reason for dismissal
- Section 139 Employment Rights Act 1996

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—(a) the fact that his employer has ceased or intends to cease—(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

P&O Cruises

- Failure to consult on collective redundancies
- 45 day minimum consultation period S.188 TULRCA
- Notify BEIS via HR1 form
- Week's pay (uncapped by statutory maximum) for each week of the protected period (90 day maximum)
- 800 employees, three month's pay each (max)

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Thank You

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