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# January 2017 Employment Newsletter

Welcome to the latest edition of our employment updates in which we hope you will find something to interest both you and your business. If there is anything in particular you would like to know more about, please do let the employment team know.

## Citysprint cycle courier was a worker

Following on from the Uber decision that found the drivers were workers, another employment tribunal has considered the employment status of the cycle couriers working for the Citysprint delivery company.

In this case, the couriers were required to pass a two-day training process. Once completed, they received a "Confirmation of Tender to Supply Courier Services" seeking to treat them as self-employed contractors. This also required the new recruits to electronically acknowledge a number of key principles, including:

- Understanding that the courier is not obliged to accept work and that Citysprint are not obliged to offer any;
- Confirmation that the courier may supply a substitute, provided that the substitute fulfilled certain criteria
- Confirmation that the courier is not entitled to paid holiday, sick pay or maternity pay.

The couriers are paid weekly in arrears as a result of an automated billing system, only for the jobs they fulfil. The Tribunal found that the "Tender" document did not reflect the true relationship of the parties and therefore they examined the reality of the situation.

They found the courier was required to log-in to Citysprint's tracking system when working, wear a uniform, work as required by the controller and provide the services meeting the company's standards. The tribunal therefore found that the courier did not have any freedom to decide how best to deliver the service and that she was integrated

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into their business. Consequently, while she was working for them she was a worker and entitled to the associated employment benefits, such as the holiday pay claimed in this case.

We are set to see a number of further cases on the issue of employment status which will continue to have significant implications for businesses managing their staff requirements in this way. Watch this space…

## Dismissals & mobility clauses

In a case before the Employment Appeal Tribunal, the finding that two employees were unfairly dismissed for redundancy was reviewed. The business had decided to close its office in Greenford and relocate the employees to their office in Leatherhead, relying on an express mobility clause in their contracts of employment. When the two employees refused to attend the Leatherhead office they were dismissed for misconduct after a disciplinary hearing and the company upheld their dismissals on internal appeal.

The original employment tribunal found in both cases that the employees were dismissed unfairly for redundancy as the disciplinary process was procedurally flawed.

In the appeal, the EAT found that in fact the employees were dismissed for misconduct (as that was the Company's belief for their refusal to comply with the instruction to change offices) but that this decision was still unfair as it was unreasonable to rely on the mobility clause, particularly as neither employee had been required to travel previously.

This case highlights the difficulties that can be encountered by an employer seeking to rely on express provisions in the contract dealing with an employee's place of work and is an important reminder that such a clause must not only be reasonably drafted but must also be implemented reasonably. Consequently, mobility clauses may not always provide a way of avoiding redundancy payments and should be considered with caution.

## Employees Sentenced

Not an employment case, but the Winchester Crown Court recently dealt with three former employees of a car rental company who had taken customer information and sold it on. The employees sold the information to accident claims companies for hundreds of thousands, which was used for cold calls about personal injury claims.

One employee was fined £7,500 payable within two years or a 3 month prison sentence would apply. The others, who had already made payments through civil legal action, were given 12 month conditional discharges but ordered to pay costs of £4,200.

This is a reminder that some employment issues will not just result in disciplinary action or dismissal, but can have criminal consequences and employers need to ensure that they have appropriate policies in place to protect their information.

## "The National Minimum Wage doesn't apply to my business"

The Department for Business, Energy & Industrial Strategy has released details of the top 10 most bizarre excuses they have received from businesses that have failed to pay their employees' the National Minimum Wage. You can have a look and choose your favourite here

By way of reminder, all workers aged 25 years or over must be paid at least £7.20 an hour (increasing to £7.50 from 1 April 2017). Younger staff must also receive pay at the minimum rates and there are specific powers for penalties to be issued in the event of non-compliance.