

## EMPLOYMENT NEWSLETTER - MAY 2017

Welcome to the latest edition 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 in a future issue, do let the employment team know.

### **Self-employment & the gig economy**

The Work & Pensions Committee have published their report following a review of the increasing numbers of self-employed workers in the gig economy (which has arrived shortly before the Taylor Review on Modern Employment practices is expected).

The reports finds that the current categories of workers are inadequate in our changing economy, which they highlight is also over-burdened by bogus self-employment. Consequently, the report recommends that a new presumption of worker status (rather than self-employed) is introduced and that the National Insurance contributions of employees and self-employed should be equalised.

You can read the report [here](#)

### **Gross Misconduct & organisational change**

The Court of Appeal has upheld the finding of an employment tribunal that an employee had been fairly dismissed for gross misconduct as a result of her poor attitude to organisational change.

The employee held a managerial position and was dismissed as a result of her failure to lead and support significant changes in her service and generally cooperate with the process. Her behaviour included at least one example of unprofessional conduct during a meeting. The employee brought claims of unfair dismissal, automatic unfair dismissal (whistleblowing), wrongful dismissal, race discrimination, victimisation and whistleblowing detriment.

The first employment tribunal dismissed all her claims, highlighting that any breach of the ACAS Code with the original dismissal procedure was corrected by the internal appeal hearing. The Employment Appeal Tribunal also found the dismissal was fair.

The employee took the case to the Court of Appeal arguing that the misconduct found against her did not justify her dismissal and that the internal appeal panel should have been prevented from making a more serious finding (deliberate insubordination) than the original dismissing panel.

The CofA found that the employee was clearly informed of the case against her and had been able to respond, therefore the final categorisation of the specific type of misconduct was not necessary to find the dismissal was fair. Secondly, the CofA highlighted that they

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found the appeal panel's findings were not more serious than the original panel as they did not increase the sanction.

This case is a useful reminder that the offering a right to appeal is an important part of the dismissal process and can help to fix earlier issues.

## **Election Fever!**

So we are now expecting a general election on 8 June 2017. All parties have produced their manifestos and the key employment provisions can be summarised as follows:

### Labour proposals include:

- reform of employment law by abolishing employment tribunal fees;
- making existing employment rights available from the first day of employment and extending them to workers;
- increasing maternity & paternity pay;
- abolishing zero hours contracts;
- creating a Ministry of Labour to uphold employment rights;
- new rights for Unions;
- ethnicity pay gap reporting;
- preservation of all EU employment rights.

### Conservative proposals include:

- maintaining current rights post Brexit
- new rights to request unpaid time off for training;
- further support for returning to work after family leave;
- a right to request unpaid time off to care for sick relatives;
- extension of discrimination protection for those with mental health problems;
- action to address gender and ethnic pay gaps

### Liberal Democrat proposals include:

- maintaining UK in the single market;
  - preserving freedom of movement within EU;
  - pay gap reporting for gender, race and sexual orientation;
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- addressing the abuse of zero hours contracts;

- pushing for board room diversity;
- flexible working, paternity and shared parental leave to be day one rights;
- abolition of tribunal fees
- providing an extra months' leave for fathers;
- extending free childcare places.

### **Holiday Pay again!**

The Employment Appeal Tribunal has confirmed that where there is an interruption of more than three months between the underpayment of salary leading to an unlawful deductions claim, this does break the series. This means that retrospective claims for holiday pay are still limited to the deductions forming part of a continuous series.

***If you are responsible for HR matters within your business (or interested in employment law discussion), please contact us to attend the monthly HR Exchange with Julie Taylor from GL and Michelle Bailey from People Essentials. The next Newbury meeting is on Monday 3 July 2017 at 5pm.***