



Bindmans Employment News

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New Head of Employment at Bindmans

We are very pleased to announce the appointment of Shah Qureshi to the position of Head of the Employment department at Bindmans LLP. Shah has joined the firm having previously worked at Legal 500 firms Christian Khan and Hodge Jones & Allen, before becoming the head of employment at Webster Dixon LLP in June 2004.

He is recommended as a leader in his field in the Legal 500 2008 and Chambers UK Guide to the Legal Profession 2009. He has acted for a number of NGOs, educational institutions and companies. He also provides specialist advice to executives and professionals.



Shah Qureshi
Head of Employment

Redundancies - Are You Prepared?



Amidst the turbulence of the current economic climate some organisations are finding it necessary to streamline, reorganise and or restructure their work force. Complicated processes such as these can, and often do, lead to redundancies.

In this brief guide to redundancy we set out some of the key issues that employers need to be aware of to avoid falling foul of their legal obligations. Nothing here is intended or should be understood as a substitute for taking legal advice.

Issue 1 - What is a Redundancy?

The first step in dealing with redundancy is to establish at the outset whether there is an actual redundancy in law.

1. The individual must be an 'employee' (not self-employed);
2. The employee has been or will be dismissed; and
3. One of the following circumstances must apply:
 - the business or work that the employee carries out is ceasing,
 - the business or work that the employee carries out is moving away,
 - the need for someone to do the employee's job is ceasing or diminishing across the whole organisation (or in the particular location where the employee works), or
 - restructuring means that the make-up and work load of the work force is being significantly changed.

Issue 2 - Protection from Unfair Dismissal Claims

- After one year's 'continuous employment' your employees attract the right not to be unfairly dismissed. (N.B. 'continuous employment' is often preserved even where there is a break in employment, such as when an employee transfers into a parent or subsidiary in the same group).
- Redundancy is one of several potentially fair reasons for a dismissal. If the redundancy is genuine and you follow the correct redundancy procedure you will have greater protection from unfair dismissal claims relating to the redundancy.
- A redundancy dismissal may be automatically unfair if you fail to follow the redundancy procedure correctly.

Issue 3 - The Procedure, Consultation and Fair Selection

In order to ensure that you fairly dismiss your employee(s) for redundancy you must follow certain procedures. Those redundancy procedures should be as transparent as possible and provide for the following steps:

- Warn and consult your employees at the earliest opportunity.
- A formal consultation period should last at least 30 days (where there are less than 20 employees being made redundant) and 90 days (where there are more than 20 people at a particular site being made redundant).
- Consult with Trade Unions where appropriate (and particularly in relation to the selection criteria).
- Apply the objective criteria fairly when selecting employees for redundancy considering whether adjustments need to be made for employees who qualify for protection under the Disability Discrimination Act.
- Ensure that the selection procedure is strictly followed.
- Consider and offer employees suitable alternative employment.
- Employees have the right to appeal their redundancy.

Issue 4 - Redundancy Award

After two years' continuous employment an employee who has been dismissed for

After two years' continuous employment an employee who has been dismissed for redundancy will be entitled to a redundancy award.

redundancy will be entitled to a redundancy award. The formula for calculating a redundancy award takes into account the age of the employee, their length of service and a 'week's pay':

- For years of service where the employee was over the age of 41 they will be entitled to 1.5 weeks' pay for each year;
- For years of service between the age of 22 and 40 the employee will be entitled to 1 week's pay per year; and
- For years of service under the age of 22, 0.5 week's pay will be awarded for each year.

A maximum of 20 years can be taken into account and a week's pay cannot currently exceed £330 (£350 from 1 February 2009) for the purposes of the calculation. With any redundancy award you must also provide the employee with a written statement showing how the payment was calculated.

It is also important to remember that in any redundancy situation your employees may be entitled to other payments such as unpaid wages, notice pay, holiday pay and other benefits.

Case Law Update

Our intention here is to highlight a few of the recent developments in Employment Law that have occurred over the last quarter or so.

These are very brief summaries and should you have any situations which you think may raise similar questions or problems, please contact us for further more detailed advice.



The EAT held that obtaining a law degree was not in principle harder for an older person to obtain than a younger person...

1. Age Discrimination

Chief Constable of West Yorkshire Police v Homer

The Employment Appeal Tribunal ('the EAT') has given some more guidance as to what can and cannot be required from staff regardless of their age.

West Yorkshire Police required their employees to have a law degree to get onto a higher pay scale. Mr Homer argued that this put him at a disadvantage due to his age (61) because he would not have been able to obtain a law degree by the time he reached retirement age and therefore would be unable to ever reach the higher pay scale.

The EAT held that obtaining a law degree was not in principle harder for an older person to obtain than a younger person. Mr Homer's inability to get to the higher pay scale was therefore "the inevitable consequence of age; it is not a consequence of age discrimination".

Our advice: Make sure you consider all your employees' abilities to obtain qualifications or experience before making them pre-requisites for any role, pay or bonus. Consider whether the required qualification or experience is significantly harder to achieve for one group than another.

2. Religious Discrimination

Saini v All Saints Haque Centre

This is an important judgment by the EAT which states that an individual can be

...an employee who works for six hours or more is entitled to a rest break of thirty minutes.

Key Contacts

If you would like to make an enquiry, please contact one of our Employment experts:



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discriminated against both in a situation where an employee is harassed because of his or her religious belief but also where an employee is harassed because of someone else's religious belief.

Our advice: This confirms that the position that already relates to race discrimination also applies to religious discrimination. It continues on from the judgement in *Coleman v EBR Attridge Law LLP* which states that an employee can be discriminated against under the Disability Discrimination Act if they are discriminated against for a reason relating to their care of a disabled person. Further decisions employing similarly wide interpretations can be expected to arise in relation to other discrimination legislation. Employers are urged to consider this and educate their staff accordingly.

3. Working Time Regulations - Rest Breaks

Commissionaires Management v Hughes

This covers several aspects regarding the law relating to rest breaks. As you are no doubt aware, an employee who works for six hours or more is entitled to a rest break of thirty minutes. This case establishes that this is not doubled if the worker then works for another six hours after that.

4. Stress at Work Claims

Dickens v O2 plc

This is a very important case for all employers because it makes it easier for claimants to establish that the employer had a duty of care to them with regard to the stress that they suffer at work.

As you will be aware an employee has to show that the employer had a duty of care to the employee, that it was reasonably foreseeable that the employee could suffer an injury as a result of their action/inaction regarding that duty of care and that their breach of that duty of care caused the employee to suffer an injury.

1. To establish reasonable foreseeability, the employee need only demonstrate that she had complained about the stress of her work. In this case, the employee had regularly been coming into work late and had told her line manager that she did not know how long she could carry on working for without becoming ill.
2. Suggesting confidential counselling was not a sufficient response for an employee complaining that they were suffering from severe stress and represented a breach of the employer's duty of care to that employee.

Our advice: Other points are made in this detailed judgment and you may want to consider it further if you have any specific concerns about stress affecting any of your employees. In any event, you should strongly consider whether any of your current employees, signed off for stress or showing significant signs of stress, should be sent to your Occupational Health practitioner to ensure that you are complying with your duty of care to them.

Seminars and Lectures



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In order to meet the needs of organisations and companies that endeavour to keep abreast of their duties and obligations as employers the employment department at Bindmans offers a range of seminars and lectures.

These events can be tailored to the specific needs of your organisation and provide an excellent way to improve your knowledge of employment law rights and obligations.

Important subjects include the statutory disciplinary and dismissal procedures, maternity and paternity rights, dealing with redundancies, and discrimination.

If you would like to discuss an event with us, please telephone 020 7833 4433 and ask to speak to a member of our Employment team, or email us at: s.queshi@bindmans.com

The information in this email is not intended as a substitute for advice on particular issues and is written in general terms. You should seek specific advice before taking any action based on the information that this email contains.

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