



Practical, Prompt, Professional HR Solutions

Newsletter

January 2009

HAPPY NEW YEAR TO YOU

In this issue we cover:

- Recent Employment Tribunal (ET) Outcomes
- What's due in 2009
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- Employment Tribunal (ET) Facts
- Question and Answer

At **Complete People Management Ltd** we want you to receive a newsletter that is informative and assists you in dealing with your people matters. If you like the newsletter, tell someone about it. If you don't, please tell us. Your feedback is important to us.



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Quote of the Month

The way to get started is to quit talking and begin doing – Walt Disney

This month's offers

Redundancy Packs –10% reduction on any pack. Visit here to find out more:
<http://www.completepeoplemanagement.co.uk/6/text/1/files/Redundancy%20Packages%20Autum%20Winter%202008.pdf>

CV services – 10% reduction. Visit here to find out more:
<http://www.completepeoplemanagement.co.uk/67/>



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Recent Employment Tribunal Outcomes



Commissionaires Management versus Hughes – working time

This case dealt with rest breaks under the Working Time Regulations 1998. It was held that:

- An employee is entitled to only one rest break for six hours work. If the employee continues to work a further six hours s/he is not entitled to a subsequent rest break;
- A compensatory rest break must be offered where a rest break cannot be taken at the correct time;
- An ET claim can only be made related to rest breaks for the three month period prior to the claim. Backdating does not apply.

Lesson: Employers must ensure that employees receive their entitlement to rest breaks at the current intervals or that a compensatory break is offered where this is not possible.

The Ministry of Defence versus Fletcher – sex discrimination, victimisation and sexual harassment

Fletcher was a lance bombardier and was openly gay. She claimed the sergeant and other male colleagues tried to destroy her career because she rejected their advances. Fletcher was pestered for sex and sent explicit text messages by the staff sergeant. She was also subject to disciplinary sanctions which obstructed her transfer to other positions. The ET found that Fletcher had been subjected to a sustained campaign of victimisation over a lengthy period. She was awarded £186,895 comprising of injury to feelings, aggravated damages, exemplary damages and lost earnings and pension entitlement.

Lesson: Employers should watch out for and tackle immediately any behavioural indications of sex discrimination, victimisation and sexual harassment.

London Borough of Lewisham versus Malcolm – disability discrimination

This claim relates to housing provision discrimination and not employment related discrimination however the outcome has implications in the employment context. Malcolm claimed that he had been discriminated against by London Borough Council when he was found to be in breach of his tenancy. He had sub-let his flat out without consent from the council. He stated that his schizophrenia had led him to make irrational decisions. Malcolm compared himself with a tenant who did not have a disability and who had sublet, claiming that the council would not have sought possession from such a person. The House of Lords decided that the comparator had to be a non-disabled person in the same position as Malcolm. The council would have sought possession of the property in this situation and thus Malcolm's case failed.

Lesson: Disability discrimination claimants may have more difficulties in future establishing disability related discrimination.

More ET cases here:

http://www.completepeoplemanagement.co.uk/24/?form_16.userid=4&form_16.replyids=10



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What's due in 2009



Working Time Regulations – 1st April 2009

The minimum paid holiday entitlement increases to 28 days from 24 days. The days can include the usual 8 bank holiday days.

Repeal of the Workplace Dispute Resolution Procedures – April 2009

The dispute resolution procedures were introduced in 2004 and most employers have complained about their complexity and the administrative burden that they create. The repeal means the return to the old law on unfair dismissal and the abolition of the statutory dismissal and grievance procedures.

Acas Discipline and Grievance Code of Practice – 6th April 2009

The revised statutory Acas Code of Practice on disciplinary and grievance procedures comes into force. Any breach of the Code of Practice will result in a tribunal increasing or decreasing any award made by up to 25%.

Extension of the Right to Request Flexible Working – April 2009

Employees will be given the right to request to work flexibly where they have children up to the age of 16. This currently stands at age 6 or under 18 where the child is disabled.

Extension of right to time off for public duties – April 2009

Time off for employees undertaking public duties will be extended to cover members of probation boards, members of court boards and youth offender panel members.

National Minimum Wage (NMW) and Tips and Gratuities – date to be confirmed

Under the current minimum wage legislation tips and gratuities given directly to workers and retained by them do not count towards the national minimum wage. Where the tips and gratuities are paid to the employer via payroll then the tip counts towards the NMW. The government is proposing to amend the legislation to state that tips and gratuities can never count towards the NMW. Watch this space for further news.

Right to request time off for training – date to be confirmed

Employers will be obliged to consider seriously requests from employees to take time off for training. Requests can be refused so long as there is a good business reason for doing so.



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ACAS Discipline and Grievance Code of Practice – April 2009



So what's it all about?

- The current rigid structure is to be replaced with principles which the employer must follow. Set timetables are therefore replaced.
- Each case should be handled fairly:
 - Deal with issues promptly. Meetings and decisions should not be unreasonably delayed;
 - Employers and employees should act consistently;
 - All necessary investigations should be carried out;
 - The employee should be notified of the basis of the problem and be given the opportunity to put their case forward before any decisions are taken;
 - Employees are entitled to representation at any disciplinary or grievance meeting.
 - Employees are entitled to appeal against any formal decision made.
 - Different personnel should carry out the investigation and disciplinary meetings where practicable.
 - An employee must notify their employer of the grounds for their appeal in writing.
- A written record of a case should be taken and held on file.
- The size and resources of the company will be taken into consideration by the ET when considering a case. It may not be practicable for example in some cases for all employers to implement all the steps of the code.
- Employment Tribunals will be able to
 - increase any award by 25% (currently 50%) where the new code is not followed by the employer;
 - decrease any award by up to 25% if the employee has unreasonably failed to follow the guidance of the code.
- The code does not apply to redundancy situations.
- The code does not apply to non renewal of fixed term contracts on their expiry.

While the new code is not prescriptive it is open to interpretations and therefore it is certain that ET case decisions will interpret further the meaning in practice.

It is likely that your existing discipline and grievance policies and procedures will need to be updated to reflect the new code. If you require assistance with this then please do not hesitate to contact us at info@completepeoplemanagement.co.uk or on 0208 8168 726.



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Employment Tribunal Facts



According to Personnel Today (Source CBI/Pertemps employment trends survey 2008 and Employment Tribunals Service):

- In 2007-2008 189,300 claims were received by ET's.
- In 2006-2007 132,600 claims were received by ET's.
- 39% of employers have received at least one ET claim in the last 12 months.
- 26% of cases were settled out of court despite these employers being advised they were likely to win the case.
- 44% of employers believed that weak and vexatious claims had increased in the last year

Question and Answer



At **Complete People Management Limited** we want to help you manage your people effectively. If you have a question that you want answered then ask us. We will not disclose your identity. What have you got to lose? ***It's free!***

Q: What is the minimum holiday day entitlement?

A: This currently stands at 24 days including the usual 8 bank holiday days. From the 1st April 2009 this increases to 28 days. Remember to pro-rata for part-time employees.

The newsletter is sent to you each month and includes information about employment legislation changes and top tips on an employment subject in a concise format. Further advice must be sought before any subsequent action is taken. The information published is without responsibility on our part for loss occasioned to any person acting or refraining from action as a result of information published herein. We welcome your feedback and views so please feel free to email us at info@completepeoplemanagement.co.uk If you know of anyone who may also be interested in receiving the newsletter please ask them to register on the company website or contact us directly.

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