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## Newsletter- February 2009

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.

In February's newsletter we cover:

- Employment Tribunal Payment and Award Limits
- Recent ET outcomes
- Holiday entitlements during sick leave
- Managing the Survivors



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## Quote of the Month

As I would not be a slave, so I would not be a master. This expresses my idea of democracy. *Abraham Lincoln.*

## Employment Tribunal Payment and Award Limits from the 1<sup>st</sup> February 2009

- Maximum for unfair dismissal is now £66,200
- Maximum basic award for unfair dismissal is now £10,500
- Limits on a weeks pay is now £350



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## Recent Employment Tribunal Outcomes



### **Ali versus Birmingham City Council – heat of the moment resignation**

Mr Ali resigned in writing on the 25<sup>th</sup> April 2007. He said his resignation was due to personal circumstances. His manager gave him a cooling off period of 20 minutes followed by an additional 10 minutes but still Ali confirmed he wished to resign. Two days later he called the council and was told he had no automatic right to return to work and 4 days later he emailed his manager saying he wanted to return to work. The council said a decision was taken not to reinstate him and that his resignation still stood. The ET held they did not have the jurisdiction to hear Ali's case as he had resigned. The EAT held that Ali had not resigned in the heat of the moment as he had been given 30 minutes to reflect on his decision and his decision did not fit the special circumstances previously held in the case of Southern versus Franks Charlesly. Here the special circumstances were:

- Immature employee;
- Decision taken in the heat of the moment;
- Employee being jostled into a decision by the employer

Lesson: Investigate each and every employee resignation before accepting it as an apparent straightforward resignation.

### **Eastern & Coastal Kent PCT versus Grey – reasonable adjustments**

The Disability Discrimination Act (DDA) states that an employer is exempt from the duty to make reasonable adjustments if they did not know and could not reasonably be expected to know that someone is likely to be placed at a disadvantage by a disability. In this case the EAT held that each of the elements of the DDA must be satisfied in order for the employer to be exempt. The four elements include:

- The employer does not know the person has a disability;
- The employer does not know the person is likely to be at a substantial disadvantage compared with persons who are not disabled;
- The employer could not reasonably expect to know the person has a disability;
- The employer could not reasonably expect to know the person is likely to be at a substantial disadvantage compared with persons who are not disabled;

Lesson: Ask employees to complete a disability appraisal form at the commencement of their employment and annually thereafter to ensure full awareness of employees disabilities if they choose to disclose them. Contact Sue on 0208 8168 726 for the related documentation.

### **Amicus versus Glasgow City Council – TUPE consultations**

The EAT held that a transferee (the company where employees have transferred to) is not obliged to consult with the employees who have transferred after the transfer in relation to "measures" it proposed taking prior to the transfer.

**To keep up to date with ET cases here:**

[http://www.completepeoplemanagement.co.uk/24/?form\\_16.userid=4&form\\_16.replyids=10](http://www.completepeoplemanagement.co.uk/24/?form_16.userid=4&form_16.replyids=10)



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## Holiday Entitlements during Sick Leave



A cocktail of



and this

In the recently reported [Stringer versus HMRC \(previously Ainsworth versus HMRC\)](#) it was held that employees who are on sickness absence leave are entitled to accrue holiday time. In addition employees who have been sick may be able to claim for holiday pay entitlements dating back 10 years (when the Working Time Directive was first introduced). Employees who are laid off during sickness absence will also be entitled to payment in lieu of the holiday time accrued.

The case has been returned to the House of Lords for a final hearing later this year.

In practice the ruling may mean:

- Employees returning from sick leave will be able to take accrued holiday time;
- Employees who are on long-term sickness absence and whose employment is terminated will be entitled to a lump sum payment related to the holiday time they accrued while they were absent from work even if the holiday time relates to a previous holiday year.
- If an employee is on sick leave for a whole holiday year s/he is entitled to 4 weeks holiday pay, even though s/he did not work. The paid leave can be taken during the year or carried over to another year (this will be decided in national courts).
- If an employee is on sick leave for a period up to and including the end of any holiday year, s/he is entitled to the holiday time accrued and not taken during the sick leave period. Again the paid leave can be taken during the year or carried over to another year (this will be decided in national courts).

In reality this means better control of employees on sick leave. Remember to:

- Communicate the company sickness absence procedure to all employees on a regular basis and each and every time an employee is absent from work due to sickness
- Conduct return to work interviews without exception on the first day the employee is back at work
- Conduct home visits
- Ask the employee for permission to contact their doctor when their absence exceeds 4 weeks (or the period stated in your sickness absence procedure)

For holiday and/or sickness absence advice and/or documentation contact Sue on 0208 8168 726.



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## Managing the Survivors



**From anxiety**



**to goodbyes**



**to increasing motivation**

From the moment you announce that potential job losses are necessary in your business employee motivation will undoubtedly decrease. Anxiety sets in as employees venture into the state of unknown – will they or won't they be selected? "What will I do if I lose my job? What does the future hold for me?"

After this period has ended comes the time to say goodbye to colleagues. This is also a strenuous time.

Finally you are left with the employees who have been selected for their skills, abilities and talents. These employees will feel wounded and may well feel uncertain about their future with the company.

It is vital that the survivors are managed well. You are left with a smaller team and they may be negative towards management for the actions taken and the fact that they have more work to do now. So what can you do to help and support these valued employees?

- Communicate, communicate, communicate. Remove all uncertainty by regularly communicating with the employees.
- Be open with your employees. Tell them what the state of the business is and welcome their ideas at all times. Put simply....Tell them how it is.
- Be present as their manager. Work with employees.
- Operate regular surgeries to listen to their individual concerns.
- Carry out some team building. You have a new team now and the dynamics will be different.
- Retrain employees where they have duties to complete that are new to them.
- Re-focus on your "new" business priorities
  - Tackle the basics, e.g. performance appraisals, performance management, absence management and more
  - Embrace employee ideas
  - Embrace business opportunities

At **Complete People Management Ltd** we can help you manage the survivors so that the transition period from the old to the new team is smooth.

Why not consider for example the use of TetraMap<sup>®</sup>? Visit here for more details:  
<http://www.completepeoplemanagement.co.uk/69/>

Telephone Sue on 0208 8168 726 to discuss your needs further.



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## 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: I need to reduce the hours within the business due to a reduction in sales, is this redundancy?

A: Potentially yes. It will depend upon the extent of the hours to be cut for each employee. A dismissal for the reason of redundancy in this case would be wholly or mainly attributable to the fact that the requirements of the business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish. Consideration therefore must be given as to whether the employees need to carry out certain work.

Consultation needs to occur with all employees in the business, even the ones that may not be directly affected, as they may provide suitable alternative suggestions. This is crucially important for legal reasons and also to avoid job losses or reduction in hours where possible. If, after consultation no other alternative can be found but to reduce the hours, employees need to be given the choice to accept the new terms and conditions, i.e., reduced hours of work, or the option to take redundancy. The company then decides on the best option for the business and the employees.

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