

Employment Law Update – December 2008/January 2009

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- Discrimination by Association

The European Court of Justice recently handed down a long-awaited decision in a protracted and complex discrimination case. The case was brought under the Disability Discrimination Act 1995, but the Court's decision has far-reaching implications for all other types of discrimination law (including age and gender discrimination).

The case was brought by a legal secretary who worked for a London-based law firm. In 2002, she gave birth to a son, who is disabled and suffers from serious respiratory problems. She is her son's primary carer. The law firm for which the mother worked attempted to make her redundant during 2005, but she claimed that she was effectively being forced from her job. She also claimed that she had suffered unlawful harassment at work following the birth of her son, having been criticised for taking parental leave, refused permission to return to her original post, threatened with disciplinary action for alleged lateness and not allowed to work from home whilst her son was due to have an operation.

Ultimately, the Court found that the employer had acted in a discriminatory manner and, although the acts of discrimination did not relate to the mother's disability but that of her son, the claim was still allowed.

The importance of the above decision is that employees can now make claims against their employers for discrimination by association. This is of particular relevance to full-time carers, who can now hold their employers to account for any acts of discrimination which have impacted upon the person(s) in their care.

Employers should be conscious of their duty to provide reasonable adjustments (such as flexible working) specifically for employees who are carers. Full guidance on the effects of the case and the legislation which is now likely to follow can be obtained from Leonard Gray LLP's employment specialists.

- Statutory grievance procedure

The standard disciplinary and grievance procedures which were introduced by the Employment Act 2002 are to be repealed during April next year, which will certainly come as a relief to many employers, in view of the plethora of additional litigation that has arisen since their introduction. The withdrawal of these procedures from the statute book are also likely to benefit employees, for whom the procedures have often seemed confusing and unnecessarily formulaic. Previous Leonard Gray LLP's Employment Law Updates have incorporated various comments about and guidance on the procedures. For the present time, both procedures remain good law and employers and employees alike must continue to comply with them.

A recent Employment Appeal Tribunal case focused on the statutory grievance procedure in particular. The case involved a claim made by a Polish farm worker, who had lodged a grievance with his employer alleging race discrimination. The letter stated that the employee wanted the grievance to be treated "informally" but also made it plain that if the complaints were not properly dealt with, a formal written grievance would follow. In the end, the employer dealt with the grievance informally and did not invoke the full statutory procedure. The employee subsequently resigned and made a claim. That claim was successful to the extent that the Tribunal found a grievance had been raised which necessitated the use of the statutory procedure.

The case underlines the fact that, for the statutory grievance procedure to apply, the employee need not produce a formal, detailed letter of complaint to his / her employer. In fact, the view now held by the majority of legal advisers is that an oral complaint alone may very well justify the use of the statutory procedure. This is of profound importance to both employees and employers alike.

- Insolvent employers

The current financial turmoil in the UK economy has placed a considerable number of jobs in jeopardy and for those employees who are owed money by

their employers in the form of notice or statutory redundancy payments or any other form of remuneration the concerns are considerably greater, particularly where their employer is or is likely to become insolvent.

A number of statutory measures are actually in place to confer protection on the employees in the above circumstances and it is important that employers are also aware of these. Please contact Leonard Gray LLP's employment specialists for further advice.

- Compromise Agreement

The current economic climate is also likely to bring about a rise in the use of these agreements, which are intended to record the terms and conditions upon which employees agree to leave their jobs, in exchange in most cases for a severance payment of some kind. The *quid pro quo* from the employer's point of view is that in accepting such payment(s), the employee is typically expected to waive any employment-related claims he / she may otherwise be entitled to bring against the employer. Leonard Gray LLP's employment specialists have experience not only in advising employees on these agreements but can also prepare the documents on behalf of employers. For further advice please call us.