



# Employment Law for Schools

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# Agenda

- Holiday Pay
- Agency Workers
- Trade Unions
- Wrongful Dismissal
- Safeguarding
- Suspension
- Shared Parental Leave
- Disability

# Publishing facility time information

- Figures for 12 month period starting 1<sup>st</sup> April 2017
- Publication before 21 July 2018
- Must publish:
  - Number of relevant trade union officials
  - Number of officials by proportion of working time spent on facility time
  - Percentage of pay bill spent on facility time
  - Percentage of facility time spent on “paid trade union activities”
- Don't sweat the small stuff!

# Holiday Pay

- ECJ will continue to affect interpretation of holiday pay requirements up to and beyond Brexit
- **King v Sash Windows:** ‘self employed’ salesperson found to be a worker after he retires
- ECJ says he can claim all holiday pay due over the 12 years of his employment
- Not subject to 18 month carry over limit applicable in cases of sickness absence
- Throws doubt on legality of two year limit on unlawful deduction claims and the ‘three month’ rule in Bear Scotland

# Brazel v The Harpur Trust

- Term time only casual music teacher
- Had his holiday pay capped at 12.07% of his annual hours
- But normal WTR calculation leads to higher proportion than that
- EAT say no justification for capping his holiday – part-time workers can be treated more favourably

# Agency Workers

- Agency workers on 12 week assignment entitled to enjoy same basic terms and conditions
- **Kocur v Angard Staffing Solutions Ltd** – that is a term by term comparison, not as an overall package
- Agency liable for pay, end user liable for access to facilities
- End user (Royal Mail) hit with £8,000 exemplary damages when it refused to provide a swipecard as it believed losing the case would be cheaper

# Unlawful inducements

- Unlawful to make an offer with purpose and effect that any of employee's terms no longer covered by collective bargaining
- **Kostal UK Ltd v Dunkley and others:** employer makes individual pay offers to employees when union negotiations break down
- EAT holds that offer was unlawful even though full recognition stayed in place for next year
- Expect an appeal - £400K at stake!

# When notice is given

- Contractual issue – does employee have to read dismissal letter for notice to be validly given?
- Yes says Supreme Court in **Newcastle Upon Tyne Hospitals NHS Foundation Trust v Haywood**
- Notice sent to employee's home while she was on holiday did not start to run until she had had a reasonable opportunity to read it
- As a result, the notice did not expire until after her 50-th birthday (£££!)



# Wrongful Dismissal v Unfair Dismissal

- Wrongful dismissal is contractual – was the employer entitled to dismiss without notice?
- Unfair dismissal is statutory – has the employer acted reasonably?
- **Cameron v East Coast Mainline Company Ltd** – Tribunal failed to make its own finding as to whether employee was guilty of gross misconduct
- **Mbubaegbu v Homerton University Hospital** – Tribunal entitled to find that dismissal for first offence was fair, but failed to make findings as to whether misconduct was ‘gross’ or not

# Agoreyo v London Borough of Lambeth

- Primary school teacher suspended for alleged 'inappropriate force' with two disruptive children
- Resigns same day – claims breach of contract
- High Court upholds claim – employer's reason for suspension was unclear, and no exploration of alternatives
- In circo, with teacher asking for support which had not been given, decision to suspend was a fundamental breach of contract

# Safeguarding and disclosure

- Supreme Court upholds dismissal of headteacher for failing to disclose friend's convictions: **Reilly v Sandwell Metropolitan Borough Council**
- Failure was in breach of contractual duty to assist governing body in discharging its functions
- Court dodges issue of whether that involved breach of privacy

# Lopez Ribalda & ors v Spain

- Spanish employees sacked for stealing from till – based on covert CCTV
- Spanish Data Protection Law gave specific right to be notified
- That gave reasonable expectation of privacy
- On that basis ECHR holds breach of Article 8 – failed to strike right balance
- Case now going to Grand Chamber

# Morris v Metrolink RATP Dev Ltd

- Union rep uses copy of manager's diary entry as evidence in collective grievance
- Employer dismisses for retaining unlawfully obtained data
- Court of Appeal upholds Tribunal finding that this could not be separated from trade union activities – automatically unfair dismissal

# Right to work in the UK

- Employer has ‘statutory defence’ to civil penalty for employing illegal workers if proper document checks have been done
- But that does not mean that employment is unlawful in absence of those checks
- In **Baker v Abellio London Ltd** a Jamaican national with right to live and work in UK was dismissed on Home Office advice fro lack of paperwork
- Held not to be a ‘statutory ban’ dismissal – he was not subject to immigration control
- Was SOSR – issue for ET was reasonableness – was Home Office given proper information?

# Discrimination and Shared Parental Leave

- Is it discrimination for employer to pay enhanced maternity pay but only statutory shared parental leave pay?
- Not direct discrimination says EAT: **Capita Customer Management Ltd v Ali**
- Both women and men taking SPL are treated equally
- In any event, maternity leave is permitted as more favourable treatment in connection with pregnancy or childbirth
- Issue of indirect discrimination still open – EAT send back case in **Hextall v CC Leicestershire Police**

# Direct disability discrimination

- Direct discrimination: less favourable treatment because of 'a' protected characteristic
- **Chief Constable of Norfolk v Coffey**: Employer refuses officer who fails to meet hearing standard – wrongly believes her duties would be restricted
- **Held**: direct discrimination, even though not alleged her hearing loss actually amounted to a disability



# Knowledge of disability

- S.15 discrimination and duty to make reasonable adjustments only apply if employer knows or ought reasonably be expected to know that employee is disabled
- **Donelian v Liberata UK Ltd**: CofA says employer can put weight on well-reasoned OH opinion
- OH had said there was no real medical impairment and employer was entitled to rely on that despite ET finding that there was a disability

# City of York Council v Grosset

- Teacher dismissed for showing 'Halloween' to vulnerable teenage group
- Tribunal found that arose in consequence of his disability
- Court of Appeal say no need for employer to be aware of the link
- Court also confirms test of justification is stricter than in unfair dismissal – 'proportionate means of achieving legitimate aim'

# Williams v The Trustees of Swansea University Pension and Assurance Scheme

- Disabled employee forced to take early retirement
- Enhanced pension based on salary at time of retirement
- Disability had forced him to work part-time – pension would have been higher if disability had been sudden
- Court of Appeal says no ‘unfavourable’ treatment
- Actually treated favourably, even if some disabled employees would have done better still
- Permission given to go to Supreme Court!

# Reasonable adjustments

- Duty to take reasonable steps to remove disadvantage caused by PCP, physical feature or lack of auxiliary aid
- An expectation can be enough to be a PCP – **United First Partners Research v Carreras**
- Tribunal must identify the steps that should have been taken, not just say employer should have made more enquiries - **County Durham and Darlington NHS Foundation Trust v Jackson**

# Keep in touch...



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