

MOORE BLATCH

UPDATE

Employment - February 2020

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WELCOME TO OUR FIRST EMPLOYMENT UPDATE OF 2020!

In this issue we look at one of the largest surveys on sexual harassment in the workplace, and cover the rise in employers failing to pay minimum wage.

We also update you on several discrimination cases: that of Samira Ahmed who won her equal pay case against the BBC, a transgender job applicant and her discrimination claim against Debenhams, a sacked pregnant worker who successfully argued her own unfair dismissal claim in the employment tribunal, and a secretary who claimed age discrimination because of a 50th birthday card.

Also in this issue Jasnoop Cheema, Commercial Solicitor, provides

useful pointers for dealing with employee behaviour on social media.

If you have any queries, please don't hesitate to get in touch.



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NOTE TAKING SERVICES NOW AVAILABLE

We advise our clients to take notes at any disciplinary, grievance and redundancy meetings held with their employees. Many ask us if we can assist them by providing a note taker. Our team secretary Charlotte Webb is an experienced note-taker and is available to assist.

We appreciate that it can provide peace of mind for business owners and HR managers to have an independent note taker in the room (or on the phone). Charlotte's hourly rate is £50 + VAT, plus travel time and costs.

Please contact us if you would like any further information about this new service.

EMPLOYMENT TERMINATION

QUICK NEWS: CAN A BIRTHDAY CARD BE DISCRIMINATORY?

A legal secretary, Miss Munro, whose colleagues asked about her 50th birthday and sent her a birthday card, claimed she suffered age discrimination as a result.

Describing herself as a private person, Miss Munro said the incident had left her so upset she left work early, claiming colleagues' comments had left her feeling "ambushed, punched, slapped and humiliated."

According to the firm, they had long standing concerns about Miss Munro's poor performance. For this reason, a month after the incident above, the firm decided that that they would have to either bring disciplinary proceedings against Munro, or mutually agree a date for her departure.

Munro denied her performance had been poor, claiming instead that she had suffered discrimination due to her age.

Munro's case was dismissed. The employment tribunal found that Munro's "sensitivity about her age appeared unusual and extreme", adding that "the birthday card was intended for the claimant as an act of kindness."

COMMENT

We acknowledge that the circumstances surrounding the Claimant's sensitivity is unusual and not something that is likely to come up very often. We are not suggesting that you should impose a blanket ban on birthday cards at the office. However, this case does illustrate that everyone reacts differently, depending on their opinions and feelings. Managers need to be wary of the fact that something which seems inconsequential to them may be interpreted completely differently by someone else in their team.



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QUICK NEWS: FIRMS FAILING TO PAY MINIMUM WAGE

According to the Resolution Foundation think tank, one in four people over the age of 25 are being paid less than the minimum wage.

The research also shows that the number of workers over the age of 25 has increased since the introduction of the National Living Wage in 2016 – from one in five prior to 2016 to one in four in April last year.

Resolution's Lindsay Judge said the introduction of the National Living Wage had been "one of the UK's biggest policy successes in recent decades". However, she added it has also "led to a worrying rise in minimum wage underpayment."

The Government, responding to the research, said that "HMRC won't hesitate to take action to ensure that workers receive what they are legally entitled to".

Companies that don't comply with the National Minimum Wage could face fines of 200% of the arrears. In the worst cases, they

could face criminal prosecution. Employees can also bring claims for unlawful deduction of wages.

COMMENT

Underpayment of minimum wage is something that we see in the news every so often and it serves as a useful reminder to check that your staff are being paid correctly. The current minimum wage is £8.21 per hour for people aged 25 and above and this will rise to £8.72 per hour in April this year.



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£9,000 SETTLEMENT FOR TRANSGENDER WOMAN

A transgender woman who claimed she was rejected for a job as a temporary sales assistant with Debenhams has received a £9k settlement.

Ava Moore was invited for interview which was said to have gone very well. She was thought to have all the skills and experience needed for the job as well as being able to work the hours that the store needed. However, a few days after being informed she'd been unsuccessful, she received an anonymous email alleging the reason she hadn't been given the job was because she was transgender.

During the interview Moore disclosed her birth certificate and therefore her gender history. She claimed that when those interviewing her realised that she was transgender, there was a "change of atmosphere" in the room.

Moore's application was supported by the Equality Commission who said the "issues were simple", their chief commissioner stating that "a job should go to the person who does best at interview and selection tests."

Debenhams settled the case without admitting liability.

COMMENT

This case highlights the importance of ensuring your company has an open and inclusive recruitment process to ensure unlawful discrimination does not occur. Training and guidance should be given to the individuals involved in the recruitment process to ensure they are aware of what should be considered during an interview. Not only will this help to avoid discrimination claims, but it will ensure that the best candidate is hired for the job.



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GOVERNMENT SEXUAL HARASSMENT SURVEY

In one of the largest ever surveys of its kind to be carried out, the Government Equalities Office is surveying thousands of victims of sexual harassment as the government continues to address the issue of harassment in the workplace.

Wanting to strengthen protection for workers, the government has issued a survey to 12,000 workers, inviting them to share their experience of sexual harassment. The government hopes the survey will "build a picture of how many people are affected" as well as shed light on "where they have experienced harassment; and what forms of harassment they have experienced."



Alongside this, the Equality and Human Rights Commission has published draft guidance, advising employers on how to make their workplace safe from sexual harassment. You can access the guidance [here](#).

COMMENT

We will continue to monitor the government's plans in future updates but in the meantime, we recommend you review the draft guidance and consider what measures you can implement now. For example, it may be a good time to review your anti-harassment policy or implement one if you do not have one. Rolling out staff training on acceptable conduct at work may be another option to consider. Please do not hesitate to get in touch with us to discuss this further.



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SAMIRA AHMED WINS EQUAL PAY TRIBUNAL

One of the BBC's most high-profile presenters, Samira Ahmed, has won the equal pay tribunal she brought against the broadcaster.

Ahmed, as presenter of BBC's Newswatch, was paid £440 per episode. Yet Vine, as presenter of Points of View, was paid £3,000 per episode. Claiming that these were like-for like roles, Ahmed claimed to have been underpaid by £700,000.

The BBC insisted the pay disparity "was not determined by their gender", pointing out that Ahmed was paid the same as her predecessor, Ray Snoddy, and therefore he should be seen as her pay comparator, not Vine.

However, the tribunal unanimously agreed with Ahmed, saying her work was like that done by Vine. With the burden being on the BBC to prove that the pay gap was not due to gender, the judgement found the BBC did not produce evidence to prove the pay gap was due to differences in their roles, programmes and profiles.

In a case that could have far reaching implications, the judgement has challenged the previously held presumption that a higher profile could lead to higher pay. It also highlights the importance of pay equality for those that have like for like roles.

COMMENT

We are seeing a flurry of high-profile equal pay claims in the news at the moment which could bring this issue to the forefront of



employee's minds. Now is as good a time as any to review your employee salaries and consider whether there are any pay disparities which need to be addressed.



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£17,000 FOR SACKED PREGNANT WORKER

Liz Earle beauty company has admitted to falling "short of our standards" after they were ordered to pay £17k to a pregnant employee who was made redundant.

Helen Larkin, who had worked for Liz Earle for five years, was eight months pregnant when she was given two weeks' notice of her redundancy. After unsuccessfully applying for two other roles, she claimed she was rejected due to her upcoming maternity.

Liz Earle claimed that Larkin's redundancy was not due to her pregnancy, but a restructuring where three roles were being terminated.

Following Larkin's successful claim, an employment rights campaign group has called for the three-month time limit for women to file claims to be doubled.

COMMENT

There are an increasing number of self-represented employee's bringing employment tribunal claims against their employers. This

case shows that self-represented employees are not to be taken for granted as although they are not legally qualified, if they can successfully show they have been wronged by their employers, the employment tribunal will have no problem in finding in their favour.

Even in cases where the employee is unsuccessful, companies can rack up huge legal fees in defending the claim. Our advice in a redundancy situation is always to follow a proper process to ensure the company is not leaving itself vulnerable to unfair dismissal claims.



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THE PERILS OF SOCIAL MEDIA

Social media has revolutionised the way people communicate. With people increasingly creating and sharing content online, the nature of that communication has changed too. As people use social media both inside and outside of the workplace, this can present a unique set of challenges for employers.

Under UK law, employers are vicariously liable for the acts carried out by their employees, and this includes social media use. Therefore, the way in which employees use social media carries risk for any business.

What are the dangers of social media use?

- Reputational damage
- Employees posting defamatory or discriminatory work-related comments for which their employer is potentially liable
- The disclosure of confidential information, which could include commercially sensitive information belonging to the business
- Infringement of third-party intellectual property rights.

Social media policies are important in mitigating against the dangers of social media use and some high-profile cases give useful insight into the importance of ensuring your social media policy is well thought through.

Crisp v Apple Retail (UK) Ltd

This case concerned an employee who posted negative comments about Apple and its products on Facebook and as a result the employee, Mr Crisp, was dismissed. Mr Crisp brought a claim for unfair dismissal. However, Apple had made it clear in its policy and training materials that protecting its image was a 'core value', also stating that making derogatory comments on social media would have serious consequences and could lead to dismissal. With the tribunal finding that Apple's policy was clear on the consequences of social media misuse, Mr Crisp's claim was unsuccessful.

Walters v Asda Stores

In contrast to the Apple case, a separate employment tribunal found that an Asda employee posting that she'd be 'happy to hit customers on the back of the head with a pick-axe' did not amount to gross misconduct and did not justify dismissal.

This case highlights the importance of clearly setting out the consequences of posting harmful comments in a social media policy, especially those types of behaviours for which an employee could be dismissed.

Blue v Food Standards Agency

In a similar case to Walters v Asda Stores, this case concerns an employee who was dismissed for 'liking' a comment about his manager being attacked with a chair. Amongst other things, the Food Standards Agency (FSA) argued that this brought the FSA into serious disrepute. An employment tribunal found the employee's dismissal to be unfair for several reasons, though one factor taken into consideration was the FSA's policies which set out several scenarios which allowed for disciplinary action, yet none of these scenarios allowed for dismissal.

Preece v Wetherspoons

Here, a pub manager, who had been on the receiving end of verbally

abusive comments from customers, later made comments about those customers on Facebook. Wetherspoons had a clearly worded policy which reserved the right to take disciplinary action should the contents of any Facebook page "be found to lower the reputation of the organisation, staff or customers and/or contravene the company's equal opportunity policy." Having a policy that was clear on the consequences of inappropriate comments posted on social media meant that the Wetherspoons' dismissal of the pub manager was found to be fair.

Of course, the outcome of any case depends on the facts, though as the cases above show, it is paramount to have a well thought through social media policy in place as the content of that policy is important if you have to take action and enforce those policies.

What type of clauses should be included in a social media policy?

- Rules about accessing social media sites whilst at work
- Information about any monitoring of employees' use of social media in or outside the workplace
- Outlining any prohibited use of social media such as;
 - derogatory or defamatory comments about colleagues, the business or clients,
 - disclosing commercially sensitive confidential and proprietary information,
 - not doing anything that could jeopardise trade secrets or intellectual property rights belonging to the business or a third party,
 - misuse of other employees' personal data
- Guidelines for employees required to use social media for business use
- The consequences of breaching social media policy should be clearly set out.

Navigating an ever-changing landscape where employees use of social media outside of work can give rise to risks, it is sensible to implement a social media policy tailored to the specific needs of your business.

A policy should clearly state what is considered acceptable, should be wide enough to cover personal use outside of the workplace, the protection of confidential information and intellectual property, and any defamatory or derogatory remarks. Policies should also be clear on the use of social media when using company equipment.

Businesses should also take steps to communicate that policy, implement appropriate training, monitor compliance and review the policy regularly to ensure it meets the requirements of the business as well as the fast-changing social media landscape.



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