

### EMPLOYMENT LAW BULLETIN – AUGUST 2006

#### RECENT CASES

##### HOUSE OF LORDS

The House of Lords has dismissed the employer's appeal in the case of *Majrowski –v- Guys & St. Thomas' NHS Trust* and in doing so has agreed with the Court of Appeal that an employer can be vicariously liable in damages for its employees breach of the Protection from Harassment Act 1997.

##### COURT OF APPEAL

In *CMC Group Plc & Others –v- Vang* the Court of Appeal has held that a clause in an Agreement requiring the recipient of a settlement sum to repay it in the event of "any breach" is unenforceable as a penalty. This has implications for employers using such clauses in Compromise Agreements. Clauses could be worded so that, where they provide for amounts to be repaid, they make a genuine attempt to reflect the employer's potential loss. However employers may take the view that even though a "penalty-type" clause may not be enforceable, it will act as a deterrent sufficient to make its inclusion worthwhile.

In *Circo Ltd –v- Redfearn* the Court of Appeal has held that an employee dismissed from a job working with people of Asian origin following his election as a British National Party Councillor was not discriminated against (on racial grounds). Although the employers decision to dismiss involved racial consideration, this did not necessarily mean the less favourable treatment was "on racial grounds". The Court held that any other interpretation would be incompatible with the purpose of the Race Relations legislation.

##### FORTHCOMING LEGISLATION

Employers should be aware that the Employment Equality (Age) Regulations 2006 come into effect on the 1<sup>st</sup> October 2006. The Regulations will outlaw age discrimination in employment and remove the upper age limit from the right to claim unfair dismissal and redundancy payments. These Regulations will affect all aspects of recruitment and employment and employers will need to be making provisions now to ensure that they comply with the Regulations when they come into effect.

##### NATIONAL MINIMUM WAGE

New rates for the National Minimum Wage have been announced. With effect from October 2006 the rate for workers aged 22 and over is £5.35 (current rate £5.05); the rate for workers aged between 18 and 21 and those aged 22 and over doing accredited training in the first six months of employment will be £4.45 (current rate £4.25); and for workers aged 16 and 17 the rate with effect from 1<sup>st</sup> October 2006 will be £3.30 (current rate £3.00).

##### EMPLOYMENT APPEAL TRIBUNAL

The EAT held in *Bolton School –v- Averbs* that a teacher who resigned after being given a written warning for hacking into his school's computer system to demonstrate its vulnerability has not been subjected to a detriment or automatically unfairly dismissed contrary to the whistle blowing provisions in the Employment Rights Act 1996, since he had been disciplined for misconduct and not for making a protected disclosure.

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