

EMPLOYMENT LAW BULLETIN – FEBRUARY 2008

RECENT CASES COURT OF APPEAL

McDougall v Richmond Adult Community College – Likelihood of disability recurring to be assessed at date of alleged discriminatory act

The likelihood of the recurrence of a disability must be assessed at the date of the act of discrimination, and that subsequent events cannot be taken into account.

Ms McDougall had a job offer withdrawn after medical evidence revealed she suffered from a mental illness. In fact, while the condition was lifelong, she had not suffered an episode of her illness for three years at the date of her job application. However, shortly after the job offer was withdrawn, she suffered a relapse and was committed to hospital under the Mental Health Act.

HIGH COURT

Crowson Fabrics Limited v Rider and others – what should ex-employees pay for their former employer's confidential information?

Individuals who copied and retained various documents belonging to their ex-employer concerning customer and supplier contact details and sales figures during employment had not acted in breach of their implied duties of confidentiality. In the absence of an express restrictive covenant, information did not become confidential merely because the parties gave it that label. However, they had breached their duty of fidelity. The court was not required to decide remedy but observed that the appropriate relief will be to grant damages equal to what would be a reasonable price the defendants ought to pay for using the Crowson's documents as a short cut to setting up their business.

EMPLOYMENT APPEAL TRIBUNAL

First West Yorkshire Limited t/a First Leeds v Haigh – consider ill health retirement before dismissal

The reasonable employer should give proper consideration to an ill-health retirement scheme before it dismisses an employee for long-term sickness.

The Governing Body of Hastingsbury School v Clarke - must investigate ill health before dismissing for gross misconduct

An employee had been unfairly dismissed when his employer had failed to investigate his apparent ill health before dismissing him for gross misconduct. A teacher allegedly played pornography on the over head projector and told students he consorted with prostitutes, had been taken over by aliens and that terrorists were coming to kill them. He said he was fit and denied the claims. The union said he was ill. The school dismissed for gross misconduct. EAT said tribunal entitled to find it was an unfair dismissal as the school had failed to establish his health status but reduced the award of compensation on the basis that even with medical evidence dismissal would still have occurred.

LEGISLATIVE CHANGES

Rates Increase

As from 1st February 2008 the maximum weeks pay for the purposes of redundancy and basic award calculation etc. will increase from £310 per week to £330 per week. The maximum unfair dismissal compensatory award increases to £63,000.

Employment Agency Amendments

The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2007, which will increase protection for those seeking work and reduce regulatory burdens faced by employment businesses, have now been published. The Regulations will come into force on 6 April 2008.

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