

EMPLOYMENT LAW BULLETIN – MAY 2007

RECENT CASES

EMPLOYMENT APPEAL TRIBUNAL

Agency worker not an employee

Heatherwood and Wexham Park Hospitals NHS Trust v Kulubowila and others

Mr Kulubowila had been supplied to work at the Trust by an agency. Once again the EAT held he was not employed by the Trust, being the end user. The EAT considered the suggestion made in *Dacas*, that you cannot have a conclusion that nobody employed Mrs Dacas but decided this had to be considered on the facts of each individual case and presented a high hurdle to overcome. Section 230(3) of the Employment Rights Act 1996 made a distinction between employees (who have unfair dismissal protection) and workers (who do not). Therefore, on current law, an agency worker may indeed be employed by nobody.

COURT OF SESSION

No Bank Holidays for part time employees

McMenemy v Capita Business Services Limited

With the bank holiday season upon us it is bad news for part time workers who do not work Mondays. The Inner House, Court of Session upheld the EAT's decision that, although an employee suffered a detriment under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 in not receiving days in lieu for statutory holidays, it was on the ground that he did not work on Mondays and not because of his part-time status. You can have a full timer who does not work Monday who equally loses out. However, if a written contract already gives extra holiday to account for the lack of bank holidays to part time employees then any change to the contract must be agreed by the employee or it could result in a constructive dismissal. Ask for further advice if necessary.

HIGH COURT

Enforcing a restrictive covenant

Intercall Conferencing Services Limited v Steer

A clause without geographical limit was not too wide given the length of the restriction, the European nature of Intercall's operation and the application only to those companies in competition with Intercall.

The High Court granted an interim injunction restraining Mr Steer from working with competitors for six months after the termination of his employment. The High Court decided the names, addresses, phone numbers, contact details and billing information of Intercall's customers were highly confidential information. Information about employees' salaries and bonuses was clearly confidential and relevant to poaching of staff. As the employee had sufficient seniority and industry knowledge he was likely to have significant recall of significant elements and quantities of confidential information. Therefore, there was an inadvertent risk of disclosure no matter in what capacity the employee would be employed by a competitor.

Beckett Investment Management Group Limited and others v Hall and others

The High Court dismissed an employer's claim for breach of a non-dealing covenant in former employees' contracts of employment. The claims failed because the actual employer was a holding company which did not provide those services which the former employees were prohibited from providing.

LEGISLATIVE CHANGES

Rates Increase

The Government has announced increases in the national minimum wage to take effect on 1 October 2007, accepting the Low Pay Commission's recommendations that the adult rate should rise to £5.52 per hour, the development rate should rise to £4.60 and that the rate for 16-17 year olds should rise to £3.40.

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The information given in this bulletin was, at the time of publication, believed to be a correct statement of the law. However, readers should seek specific legal advice on matters arising, and no responsibility can be accepted for action taken solely in reliance upon such information.