

EMPLOYMENT LAW BULLETIN – March/April 2006

RECENT CASES

HOUSE OF LORDS

Fire fighters part time claim (2006)

The House of Lords ruled on 1st March that the contracts of retained (i.e. part time) fire fighters must be treated as equivalent to those of full timers, essentially because the main differences between them are a function of the extra hours worked by the full-timers. Retained fire fighters must therefore be allowed to join the Firemen's Pension Scheme. The decision is likely to have considerable general significance to the benefit of part-time workers who want to exercise rights under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000.

EMPLOYMENT APPEAL TRIBUNAL

Flexible working

Commotion v Ruddy (2006)

The claimants application to the employer for flexible working was also the presentation of a grievance under the statutory grievance procedure therefore the employee was not obliged to go through both procedures.

Compensation for unfair dismissal

Compass Group v Baldwin (2006)

The EAT has made it clear that if a dismissal is unfair but it is likely that the employee would have been made redundant in the near future an appropriate reduction should be made when deciding the amount of compensation which is appropriate.

Tupe enforced with force

Sweetin v Coral racing (2005)

If an employer fails to consult with an employee before effecting a transfer of the business or part of the business in which he works then in the absence of mitigating circumstances the compensation to be paid to the affected employees will normally be the full 13 weeks' pay provided for by the TUPE regulations. Employers should take this extremely seriously, not least because in this situation the 290 statutory limit to the amount of a week's pay which applies in, for example, unfair dismissal cases does NOT apply.

LEGISLATIVE CHANGES

New Tupe regulations

New Transfer of Undertakings regulations shall apply to any transfer that takes place on or after 6th April 2006. In general the provisions are similar to those of the 1981 TUPE regulations. There are, however, some new rules. In particular, if a transferor fails to provide all required "employee liability information" to a transferee he may be liable to pay compensation, which will normally be at least £500 per employee (*regs 11 and 12*). If you are transferring a business or part of a business you would be wise to take specialist advice.

Increase in Minimum Wage

From 1st October 2006 the adult minimum wage rate is to increase to £5.35. The Development Rate should increase to £4.45 and the minimum wage for 16-17 year olds should be increased to £3.30.

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