

## EMPLOYMENT LAW BULLETIN – MAY 2006

### RECENT CASES

#### EMPLOYMENT APPEAL TRIBUNAL:

##### **Unfair dismissal compensation calculation**

##### **Knapton & others v ECC Card Clothing Limited 7.3.06**

If an employee successfully claims unfair dismissal, he can make a full claim for compensation for loss of salary even though he has been getting some pension payments. Pension payments are therefore different to sickness or invalidity benefits and cannot be deducted from the employee's loss. However, compensation for the payment of life assurance cover relating to a period before the remedy hearing will only be awarded if the employee had actually paid to take out new cover.

#### EUROPEAN COURT OF JUSTICE

##### **Pay in lieu of holiday**

##### **Federatie Nederlandse Vakbeweging v Staat der Nederlanden 6.4.06**

It is contrary to the EC Working Time Directive 93/104/EC art 7 (as amended) to allow annual leave which is not taken in the course of a given year to be replaced by payment in lieu. The directive is a health and safety measure and allowing holidays to be swapped for cash would be counter to its health and safety purpose.

#### HIGH COURT

##### **Inventions belong to employer**

Inventions made by an employee in carrying out a task of seeking the solution to a particular problem were owned by the employer under section 39(1)(a) of the Patents Act 1977, even though the inventions had a wider application than the solution of that particular problem. Employers have an interest in avoiding this type of litigation. Section 40 of the Patents Act does provide for compensation of employees for important inventions. However, this section has never been successfully invoked by an employee in litigation with an employer. It was amended by the Patents Act 2004 but employees will still have difficulty in claiming compensation under it. Both parties should therefore benefit from clear provisions in the employment agreement relating to ownership of, and compensation for, inventions.

#### COURT OF APPEAL

##### **Agency fee acceptable**

##### **Euro London Appointments Ltd v Claessens International Ltd, Court of Appeal 6.4.06**

A clause in an employment agency's standard terms allowed for a refund in the event the placed candidate left within a short period but that clause was only available if the client paid their invoice within seven days. The client tried to say such a clause amounted to a penalty and was, therefore, invalid but the Court of Appeal has held that such a combination of clauses is enforceable.

##### **Agency worker was employee of end user**

##### **Cable and Wireless plc v Muscat 2006**

A worker whose services were supplied by an employment agency to a client was held to be employed by the client under an implied employment contract. This decision confirms the case of Dacas v Brook Street Bureau (UK) Ltd. However, there is some comfort for employers using agencies in that the Court of Appeal noted that a worker's status still rests on the individual facts of the case.

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