



Employment Committee 15 January 2013

Employment Law Update

Notable Cases

Freedom of Thought, Conscience and Religion- Article 9

On 4 September 2012 the European Court of Human Rights heard the combined appeals of *Ladele and McFarlane v the United Kingdom* [2011] and *Eweida and Chaplin v the United Kingdom* [2011]. The Court will rule on whether the right to manifest religion or belief, as protected by Article 9 of the European Convention on Human Rights, was breached when, Ms Ladele was disciplined for refusing to carry out civil partnership ceremonies, Mr McFarlane was dismissed for refusing to provide counselling to same-sex couples and Ms Eweida and Ms Chaplin were restricted from visibly wearing a cross or crucifix at work.

Freedom of Assembly and Association- Article 11

Redfearn v United Kingdom [2012] - Mr Redfearn was employed as a driver for disabled adults and children for public authorities, including Bradford City Council. He was dismissed after being elected as a local councillor for the BNP. The European Court of Human Rights held that Article 11 applies to all associations and organisations, including those who hold offensive, shocking or disturbing views.

The Court held that UK law is therefore in violation of the European Convention on Human Rights because it does not extend specific protection to employees dismissed on the grounds of their political beliefs or affiliation and recommended that it should be changed by allowing employees to claim unfair dismissal or by creating a free-standing claim for unlawful discrimination on grounds of political affiliation. The judgment does not suggest that dismissing an employee because they are a member of a political party would be automatically unfair. The UK may appeal the decision.

Annual Leave and Sickness

NHS Leeds v Larner [2012] - the Court of Appeal held that a worker who had been on sick leave for an entire leave year was entitled to payment in respect of that year's unused statutory holiday entitlement on termination of employment and the worker did not need to ask for the holiday to be carried forward.

KHS AG v Schulte [2012] - The European Court of Justice held that there is a limit to the length of time an employee on long-term sick leave can continue to carry over untaken statutory annual leave. Mr Schulte, who worked for KHS in Germany, was on long-term sick leave for 6½ years and claimed pay in lieu of several years' untaken holiday on termination. The relevant collective agreement provided that, all holiday not taken within 15 months of the end of the relevant leave year would be lost. The ECJ held that there must come a time when one of the purposes of the leave (to give the employee a break from work) can no longer be met, and held that the limit of 15 months on the carry-over period was justified.

Asociación Nacional de Grandes Empresas de Distribución (ANGED) v Federación de Asociaciones Sindicales (FASGA) [2012] - The European Court of Justice held that a worker who becomes unfit for work during a period of statutory holiday must, under the Directive, be entitled to reschedule the

period of planned leave. It had already been established that a worker who becomes unfit for work before a period of statutory holiday must be able to take that holiday at a later date.

Proposed Changes - 2013

Parental leave: Increased number of weeks of parental leave from 13 weeks for each parent to 18 weeks in respect of each child and extending the right to request flexible leave to employed agency workers on return from parental leave.

Third-party harassment: Employer liability for harassment of employees by third parties is to be removed.

Discrimination questionnaires: The obligation on an employer to respond to requests for information from persons that have a potential discrimination case is to be removed.

Collective redundancy consultation: The 90 day consultation requirement for redundancies involving 100 or more employees is to be reduced to 45 days.

New employment tribunals rules: New employment tribunals rules of procedure will be introduced.

Whistleblowing: The government intends to amend the Employment Rights Act 1996 so that workers cannot bring a whistleblowing case relating to a breach of their own contract of employment unless that is in the public interest.

Disclosure & Barring Service: On 1 December 2012, the CRB and the Independent Safeguarding Authority merged into a single body, the Disclosure and Barring Service (DBS). A portable Disclosure and Barring Service (DBS) which employers can view instantly online, will be available from Spring 2013.