

Agenda item:

Title of meeting: Employment Committee
Subject: Employment Law Update
Date of meeting: 19 February 2013
Report by: Head of Human Resources, Legal and Performance
Wards affected: n/a

1. Purpose.

The purpose of the report is to provide to the Employment Committee an update on forthcoming changes to employment law for information only.

2. Employment Update

Notable Cases

Right to Respect for Private and Family Life- Article 8

2.1 In R v Chief Constable of Greater Manchester and Others [2013] the Court of Appeal has held that the statutory criminal record checking scheme (now the Disclosure and Barring Service) is incompatible with Article 8. While the scheme has legitimate aims of protecting employers, in making suitable assessments and protecting vulnerable persons, the requirement to disclose all recorded convictions and cautions is disproportionate. The Government has indicated that it will appeal to the Supreme Court and so the full implications of this decision are not yet known. Further updates will be provided in due course.

Freedom of Thought, Conscience and Religion- Article 9

2.2 In Eweida & Others v UK [2013] the European Court of Human Rights considered the right to freedom of thought, conscience and religion in different situations.

2.3 In Ms Eweida's case, the court considered BA's policy of not allowing its staff to wear visible religious jewellery. The court held that Ms Eweida's Christian cross was discrete and there was no evidence that wearing a cross at work had any negative impact on BA's brand – as other religious clothing was permitted such as turbans and hijabs. In addition as BA had subsequently allowed visible religious jewellery to be worn, this demonstrated that the previous ban was disproportionate. This all meant that BA had breached Article 9 by not permitting Ms Eweida to wear a visible cross at work. The court held Ms Eweida had not suffered any financial loss as she refused BA's job offer of non-uniform administrative work but did award her 2,000 Euros for distress.

2.4 Conversely, in Ms Chaplin's case, a geriatric nurse, the court held the employer had a legitimate reason for prohibiting Ms Chaplin from wearing a cross on a necklace, namely health and safety concerns of both herself and her patients. The Trust equally applied the same stance towards other religious groups- Sikhs were prohibited from wearing the kara bangle and Muslim nurses had to wear a closely fitted hijab. The Trust's aims were therefore legitimate and proportionate.

2.5 Ms Ladele and Mr McFarlane had both refused to provide services to same sex couples on the grounds of their religious beliefs. Their employers dismissed them as a consequence. In these cases, the court found that the employers were pursuing a legitimate aim of non- discrimination against its service users and therefore there no violation of Article 9.

Government Consultations

2.6 The Government is currently consulting on changes to the following areas of employment law:

2.7 Early Conciliation- consultation will close on 15 February 2013, on new provisions which would require claims to be referred to independent conciliators, ACAS, before being lodged at the employment tribunal. Changes expected to be introduced in summer 2013.

2.8 Annual leave- consultation concluded on 8 August 2011. The Government is considering bringing in provisions allowing individuals to carry over annual leave due to sickness, allowing employers to buy additional 1.6 weeks of statutory leave from employees and allowing employees to carry over 1.6 weeks additional leave where it is in the business interests of the employer to do so.

2.9 Changes to TUPE Regulations, consultation will close on 11 April 2013 and any changes are expected to be introduced in October 2013. The Government is consulting on:

2.9.1 Removing service provision changes from the Regulations

2.9.2 Repealing the requirement on a transferor to provide employee liability information, although the transferor will have a general duty of disclosure

2.9.3 Widening the definition of Economic, Technical or Organisational reason for dismissal to those who are made redundant following a change of workplace

2.9.4 Provision to make changes to terms and conditions after the transfer permissible.

Other Changes

2.10 Unpaid parental leave: By 8 March 2013, the Government will introduce regulations to increase unpaid parental leave from 13 – 18 weeks. From 2015, each parent will have the right to 18 weeks of unpaid parental leave for each child up to the age of 18. The Government has published draft regulations (the Parental Leave (EU Directive) Regulations 2013) which will implement this change.

2.11 Imposing a cap on unfair dismissal compensatory award to 12 months pay. Changes are expected summer 2013

2.12 The Equality and Human Rights Commission has published non statutory guidance on the public sector equality duty, which refers to equality in the workforce and the delivery of public services. It can be used in evidence at tribunals and if the Council fails to comply with this, it may be required to explain any reasons for non- compliance.

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