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## Use Employment Bulletins to send to your employment law clients

### Firms must guard against flimsy discrimination claims

The case of a middle-aged man who's thought to have made thousands of pounds from numerous discrimination claims highlights the problems faced by small firms struggling to cope with employment law.

The man used the Ministry of Justice website to lodge claims against employers who used words like "school leaver" and "recent graduate" in their recruitment advertising. He then

contacted the firms concerned telling them they could avoid the trouble of going to a tribunal if they settled with him quickly. This was in spite of the fact that he hadn't even applied for many of the jobs concerned.

Unfortunately, many firms will cave in and settle when faced with claims because, according to a recent CBI survey, they believe the tribunal system is ineffective and skewed against them.

They prefer to settle cases even though they have a strong chance of winning because they fear the cost of going to tribunals. It's easy to see a firm's dilemma, but if everyone simply gives in then it encourages more people to proceed with weak cases and the problem snowballs.

It can be cheaper in the long run for firms to stand their ground. That would certainly be true in the case of this claimant because in reality he had very little chance of success. It is wrong, of course, for firms to put age related conditions in recruitment ads, but that alone is not enough to bring a claim.

The claimant would have to show that he had actually been discriminated against. He would be unlikely to do so in these cases, which is why most of them were struck out by the Tribunal Service for being misconceived and vexatious.

Contrary to what many firms believe, tribunals don't always find in favour of the claimant and award enormous sums in compensation.

Firms will have to consider each claim on its individual merits, of course, but they should not feel pressurised into settling because they fear it is too expensive to mount a defence or because they fear the tribunal service will automatically find against them.

### Claims to employment tribunals reach records levels

The number of claims to employment tribunals has reached record levels, according to the latest figures from the Tribunal Service.

In the 12 months to March this year, the number of claims accepted by employment tribunals rose by 56%.

The huge surge in figures was largely caused by the increasing number of multiple claims. These are where several employees bring the same claim, usually relating to issues such as equal pay or TUPE matters.

However, there was also a 14% increase in single claims and a 17% increase in claims relating to unfair dismissal, breach of contract and redundancy issues. It's thought these increases are mainly down to pressures caused by the recession and the fact that employees now have a



greater awareness of their legal rights.

The figures emphasise the need for employers to have good employment policies in place to reduce the risk of costly claims.

### 'Overworked' manager receives £110,000 after suffering stress

A man who had to give up his job due to the stress of working a 65-hour week has received £110,000 in compensation.

The man worked for a university as a manager organising courses for overseas students. Due to short staffing, his team of four had to carry out work normally dealt with by six people.

The manager found himself working 65 hours a week on a regular basis. He had worked for the university for 10 years and had suffered from anxiety and depression in the past.

His increased workload put him under a great deal of pressure. He complained to his employers but they failed to deal with the problem. He then took time off work suffering from stress. He was able to return briefly but was forced to take time off again.

He then decided to take legal action and claimed compensation on the basis that his employers had not done enough to support him and ensure that he wasn't overworked.

The employer denied liability but agreed an out-of-court settlement of £110,000.

### Need more information?

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# Cap on redundancy payment was not age discrimination

A redundancy policy that capped payments to older workers did not amount to age discrimination because it met a legitimate aim of preventing windfall pay-outs to people who were close to retirement.

That was the ruling of the Employment Appeal Tribunal (EAT) in the case of Kraft Foods and one of its employees, Richard Hastie.

Mr Hastie had worked for the company for 40 years and under Kraft's redundancy scheme he would have

been entitled to a payment amounting to £90,000. However, the company had a policy in place in which payments were limited to what the employee would have earned had he remained in position until retirement at 65.

This reduced Mr Hastie's payment by £13,600. He argued that this amounted to age discrimination.

Kraft accepted that the policy applied disproportionately to employees approaching 65 but submitted that it was justified.

The EAT ruled in Kraft's favour after accepting that the purpose of the cap was to prevent windfall payments to employees who were about to retire.

The EAT president, Mr Justice Underhill, said: "To take an extreme example by way of illustration, an employee on the same earnings as the claimant, and with his length of service, who was made redundant at age 64 and 11 months would receive £90,000 by way of compensation for the loss of the chance to earn some £3,000 in the remaining month of his employment."

## Government reconsiders right to request time for training

The new Government is reviewing the regulations introduced by the previous administration which give employees the right to request time to train.

The right, which was introduced in the Apprenticeships, Skills, Children and Learning Act 2009, currently applies to employees of companies with more than 250 staff. It is due to be extended to smaller companies from April next year.

John Hayes, the Minister for Further Education, Skills and Lifelong Learning, has carried out a consultation on the regulations to see whether they are an unnecessary burden on businesses.

He said: "Before we make any decisions about the future of the right to request time to train, it is important that we gauge views on the regulation and whether it is improving training opportunities for employees."

As the legislation stands at the moment, employees of companies employing more than 250 people are entitled to request time for training that is relevant to their work. This



could be an accredited course that leads to a qualification, or it could involve unaccredited training that helps develop skills and improve business productivity.

The employer is obliged to consider the request but can turn it down if there are good business reasons for doing so. For example, the employer may feel that the training is not relevant or would not improve business performance.

Ministers are now reviewing the need for the regulations. We shall keep clients informed of developments.

## Gay employee wins harassment claim

A man who says he was subjected to incidents of bullying at work after revealing to colleagues that he was gay has won his claims of harassment and constructive unfair dismissal.

The man revealed his homosexuality at a sporting event organised by his employer. He says the incidents of bullying began shortly afterwards.

He took time off sick and submitted a written grievance listing a number of incidents of harassment. His firm held a meeting but dismissed his complaints without discussing them with him. He appealed but this too was rejected and so he resigned and claimed constructive unfair dismissal.

All the alleged perpetrators denied his allegations and so the employment tribunal tried to find corroborative evidence for each complaint. It was able to do so for four incidents and so those complaints were upheld.

He was therefore entitled to claim constructive unfair dismissal.

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