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Employment

October 2014

Flexible working rules now extend to all employees

All employees can now request flexible working hours and the right to work from home.

Employers are obliged to take the request into consideration, although they can turn it down for a number of specified reasons.

Previously, the right had only been available to carers and people who look after children.

As of 30 June, employees of businesses of all sizes have the same right. It means 20 million more workers can now benefit.

The Department for Business, Innovation and Skills announced that there will only be eight reasons for an employer not to grant the request:

- burden of additional costs
- detrimental effect on ability to meet customer demand
- inability to reorganise work among existing staff
- inability to recruit additional staff
- detrimental impact on quality
- detrimental impact on performance
- insufficiency of work during the periods the employee proposes to work
- planned structural changes.

The change is expected to boost productivity, improve motivation and reduce absence.

Time on call is held to be 'working time' by tribunal

Two paramedics have won their claim that time spent on call away from the workplace should be classed as working time.

They had been told that they would have to provide cover on call at a different ambulance station to their usual base station. They would also have to stay in accommodation that was within three miles of the station for which they were providing cover.

This meant that they couldn't go home to rest, as they would normally be able to do when on call for their base station.

The paramedics took legal action after their bosses told them that the time on call would be considered rest time.

The Employment Appeal Tribunal ruled in favour of the paramedics. It stated that as they were unable to spend the time on call as they liked, it had to be considered working time.

Help government close loopholes in zero hours exclusivity ban

The government is calling on businesses, unions and employees to help it ensure there are no loopholes in the law banning exclusivity clauses in zero hours contracts.

Ministers fear some unscrupulous employers may try to get round the ban by methods such as offering contracts guaranteeing one or two hours' work a week.

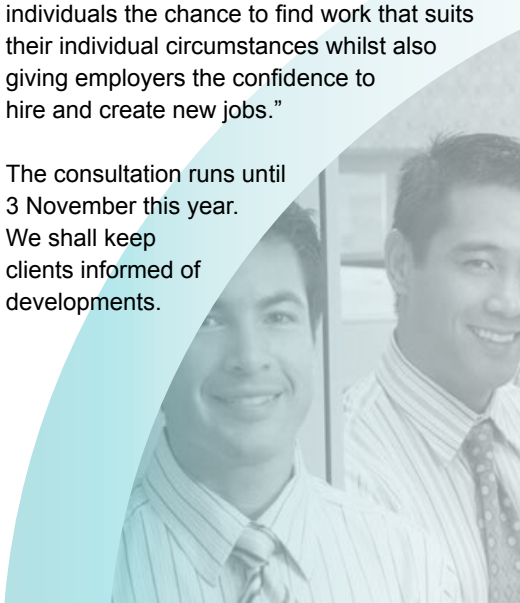
The issue has been put to public consultation with the government seeking ideas and advice from all interested parties. It asks for views on what problems might arise and whether the government should take pre-emptive steps to prevent them. It suggests one option might be to introduce civil penalties that workers could use to seek justice if they are treated unfairly for finding alternative work while subject to a zero hours contract.

Business Secretary Vince Cable said: "We are looking closely at any potential loopholes that could arise from a ban, to ensure that these are closed off and no one can get round the new law. We are also ensuring there is access to justice for workers treated unfairly.

"This is why we are bringing in new laws to ban the use of exclusivity clauses in zero hours contracts, which currently stop employees getting other jobs if they need to top up their income. We want to give individuals the chance to find work that suits their individual circumstances whilst also giving employers the confidence to hire and create new jobs."

The consultation runs until 3 November this year. We shall keep clients informed of developments.

Please contact us for more information about the issues raised in these articles or any aspect of employment law.



Sex discrimination claims rise as other claims fall

The number of sex discrimination claims has risen over the last year. There were 13,700 cases in 2013 compared with 10,700 in 2012.

Research from the Times shows that they now make up 55% of all discrimination claims, whereas they made up just over a third two years ago. Sex discrimination claims are now the highest growing area of workplace law.

It comes at a time when the number of other employment claims has fallen, following the introduction of fees for bringing a case before a tribunal. Unfair dismissal claims are down 80%.

Discrimination claims cost £1,200 to proceed to a hearing. This has forced people to think carefully about whether they can afford to lose the claim, or whether it is worth the risk.

There is also a compensation limit of £76,574 or a year's pay – whichever is lower – for unfair dismissal claims. Breach of contract claims are limited to £25,000 compensation.

However, there is no maximum pay-out for a sex discrimination claim. It's thought that in these cases employees still think the reward could be worth the risk of paying a fee.

Sacked employees win their race claim against care home

A care home has lost its appeal against a race discrimination claim made by two of its dismissed employees.

The case involved a number of staff including an African care worker, an Asian deputy manager and a white senior manager.

The dismissals followed the inappropriate administration of medication to a patient in the home.

The home's regulations stated that a supervisory document had to be signed by a doctor before a patient's medication was changed, and had to be checked each time before staff could administer treatment.

On one occasion, the document for one of the patients went missing. The deputy manager, who was Asian, volunteered to sort out the relevant documentation, even though it was strictly the manager's responsibility.

The following day, the African care worker, administered medicine to the patient even though the document had still not been obtained. The manager witnessed the treatment, and the deputy manager signed it off.

The care home launched an investigation which resulted in the dismissal of both the Asian deputy manager and the African care worker. The white manager received a six-month warning.

The two dismissed staff members sued the care home for racial discrimination. They didn't dispute that their actions could be considered "gross misconduct" and therefore a sackable offence. However, they said the manager had been let off with a far more lenient punishment.

The tribunal found in favour of the dismissed workers.

The Employment Appeal Tribunal has now upheld the decision. It stated that the tribunal had been entitled to find that the difference in treatment given to the manager had not been adequately explained.

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