YOUR LOGO

We'll put this newsletter in your firm's colours

SPRING 2022

EMPLOYMENT LAW

NEWSLETTER

Age discrimination claims rose by 74% in 2020

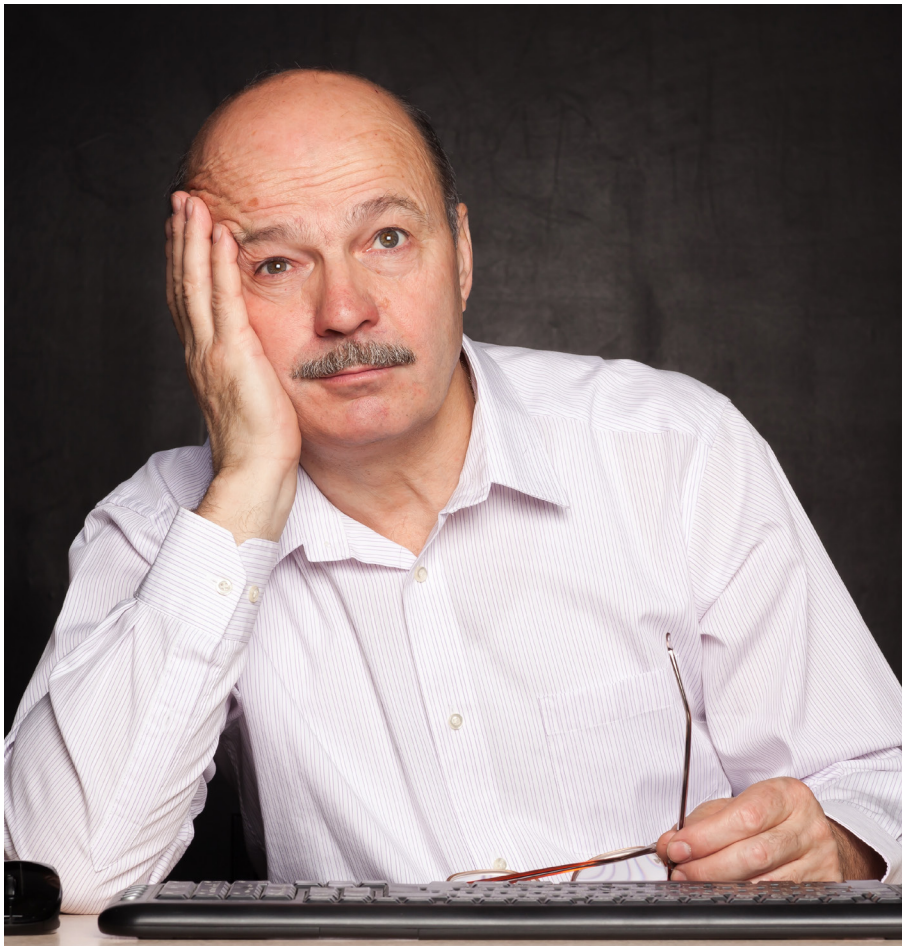
In this issue

Nurse dismissed over weekend work wins appeal

Driver loses appeal over worker status with MyTaxi

Duty on employers to prevent sexual harassment

Age discrimination claims rose by 74% in 2020



Age discrimination claims surged by 74% last year following the outbreak of the Covid-19 pandemic. It's thought the figure is likely to keep rising.

The research was carried out by Rest Less, the digital community for the over-50s.

Rest Less analysed data from the Ministry of Justice and found that the number of age discrimination claims in employment tribunals reached 3,668 in 2020, up from 2,112 in 2019, an increase of 74%.

Unemployment levels amongst the over-50s reached 426,000 in the final three months of 2020, up 48% year on year.

There were 284,685 redundancies amongst the over 50s during the same period, up 79% year on year. Rest Less predicts that the number of age discrimination complaints will soar in the coming months.

Stuart Lewis, Founder of Rest Less, said: "With more than 1 million workers over the age of 50 having been on furlough, and concerns around the potential for new virus variants to affect business, we fear a new wave of redundancies may be on the horizon.

"We know that the pandemic has exacerbated age discrimination in both the workplace and the recruitment process.

"These factors, combined with the need for many to keep working until they are 66 to access the safety net of the state pension, are leading to an increase in the number of employment tribunal cases based on age discrimination – and it's likely to get worse.

"Age is a legally protected characteristic, just like gender, ethnicity, religion and disability yet age discrimination is still widely seen as a socially acceptable form of prejudice."

Patrick Thomson, Senior Programme Manager, Centre for Ageing Better, said: "Employment tribunals are often the last course of action for people facing discrimination or unfair treatment in the workplace.

"It is worrying to see so many older workers needing to pursue them. Our recent research with employers finds that while many said diversity and inclusion were important to them, few had strategies or approaches to make their workplaces age-inclusive. We know a third of people in their 50s and 60s feel their age disadvantages them in applying for jobs.

"It has never been more important for employers to make sure they are de-biasing the recruitment process, creating an age-inclusive culture, and supporting flexible working are all crucial to doing so."

Please contact us if you would like more information about the issues raised in these articles or any aspect of employment law.

Driver loses appeal over worker status with MyTaxi

A driver has lost his appeal against a tribunal ruling that he should not be classified as a worker employed by MyTaxi app.

The case involved Christopher Johnson v Transopco UK Ltd.

From 2014 Johnson worked full time in business on his own account as a black-cab driver in London. In February 2017 he registered as a driver on TUK's Mytaxi app.

Between April 2017 and April 2018, he completed 282 trips via the app at a total value of £4,560.48 (after commission). In the same period, he earned £30,472.45 as a self-employed driver through other sources.

Johnson claimed that he should be classed as a 'worker', as defined in the Employment Rights Act 1996, and qualify for the corresponding benefits such as holiday and sick pay.

The Employment Tribunal ruled against him. It held that passengers paid for transportation services with TUK, and these services were delivered by drivers under their contract with TUK.

Johnson had an obligation of personal service to the company under that contract.

However, in the tribunal's view, he was not a worker. Rather, TUK Ltd was a 'client or customer' of Johnson's taxi-driving business.

In reaching that conclusion, the tribunal observed that Johnson could provide his services as infrequently or as often as he wanted and was not subject to control by TUK in the way in which those services were undertaken.

It further noted that, on average, he carried out 1.5 trips a day via the app, which represented less than 15% of his overall income derived from taxi-driving.

The Employment Appeal Tribunal has upheld that decision. It held that the tribunal's conclusions were soundly reasoned and should not be overturned.

Nurse dismissed over weekend working wins appeal

A nurse who was dismissed for refusing to work weekends has won a landmark ruling that could affect thousands of women with children.

Gemma Dobson was a community nurse with North Cumbria Integrated Care NHS.

She had worked fixed days because she had three children, including two with disabilities.

However, she was dismissed after the trust introduced weekend working. She said she was unable to work Saturdays and Sundays because of her childcare responsibilities.

Dobson brought claims to the Employment Tribunal, saying that she had been unfairly dismissed and been subjected to indirect sex discrimination.

The tribunal ruled against her saying that her dismissal was not unfair because, under the Equality Act, "being a female with caring responsibilities" was not a protected characteristic.

Dobson took the case to the Employment Appeal Tribunal (EAT), which ruled that the tribunal had failed to take into account the "childcare disparity" faced by women in the workplace. Crucially, the EAT ruled that the tribunal was wrong to say the new policy did not create a group disadvantage because it failed to recognise the childcare burden that fell disproportionately on women.

The judge, Mr Justice Choudhury said: "The tribunal erred in not taking judicial notice of the fact that women, because of their childcare responsibilities, were less likely to be able to accommodate certain working patterns than men."

The case was remitted back to the Employment Tribunal so that it can be decided in light of the EAT's ruling.

YOUR LOGO

Your Services

Meet the Team

Address

Contact

Email

Website

Duty on employers to prevent sexual harassment

The Government has announced it will introduce a duty on employers to prevent sexual harassment and consider extending the time limit for claims under the Equality Act 2010 from three to six months.

There will also be explicit protections from third-party harassment.

The measures are in response to the consultation on sexual harassment in the workplace, which ran from July to October 2019.

A government statement says that consultees highlighted the complexity of introducing protections from third-party harassment without the need for an incident to have occurred but were generally supportive of employers being able to use the defence of having taken all 'reasonable steps', which already exists in the Act.

On extending the protections under the Act to volunteers and interns, ministers believe that many of the latter group would already be protected, and that extending protections to the former could have undesirable consequences.

The statement says: "We recognise the impact that extending time limits could have for those bringing sexual harassment cases and that 3 months can be a short timeframe.
"Therefore, we will look closely at extending the time limit for bringing Equality Act 2010 based cases to the employment tribunal from 3 months to 6 months.

"Those which require legislative changes will be introduced as soon as parliamentary time allows.

"This package of measures will not only strengthen protections for those affected by harassment at work but will also motivate employers to make improvements to workplace practices and culture, which will benefit all employees."