CLIFTON INGRAM LLP SOLICITORS

Reading Office: 0118 957 3425

Wokingham Office: 0118 978 0099

info@cliftoningram.co.uk

e-cite

Bite-size law from Clifton Ingram

Welcome to Clifton Ingram's Employment E-Bulletin

While EU membership has been dominating the headlines, the world of employment law has continued to turn. And as we all ponder the Brexit implications, here's our roundup of some other developments.

New immigration provisions in force

This month, some of the employment-related parts of the Immigration Act have begun to apply. The main points to be aware of are that since 12 July:

- it is be a criminal offence for a person to work when he or she reasonably believes that their immigration status prevents them from doing so.

- employers of illegal workers could be convicted if they had *reasonable cause to believe* that the employee's immigration status was a bar to them working. This extends the previous offence of *knowingly employing* an illegal migrant. A maximum prison sentence of five years could be imposed, and a fine. In some circumstances, the business could be closed down for up to 48 hours.

So check, on an ongoing basis, that your workers have the right to work in the UK, and keep good records. Make sure, too, that those within your business who are involved in recruiting people to work for you know what's expected of them, and that they understand the severity of getting this wrong.

Also in this Edition:

- Disciplinary wasn't discrimination
- Prosecuted for taking personal information
- Victory for victims of modern slavery
- Restrictive Covenants from 'Day One'
- Brexit uncertainty

For more information on these, or any other Employment law topics, please contact Alison Gair or Robert Cherry.

Our Employment Team

Alison Gair
Head of Employment
T: 0118 912 0257
View Profile

Robert Cherry
Senior Associate
Tel: 0118 912 0255
View Profile

Disciplinary wasn't discrimination

Wasteney v East London NHS Foundation Trust

Ms Wasteney was a Christian worker employed by the NHS Trust. She was alleged to have 'groomed' a junior Muslim colleague by, among other things, praying with her and laying her hands on her.

The colleague said that she had begun to feel ill as a result of Ms Wasteney's abuse of her managerial position.

There was an investigation and Ms Wasteney was given a final written warning (reduced to a first written warning on appeal).Professional boundaries had been blurred.

But Ms Wasteney then brought a tribunal claim, alleging discrimination and harassment because of/related to her religion or belief.

Her claim hinged on the reason she was disciplined. If it had been for manifesting a religious belief in consensual interactions with a colleague, then that would have been within her rights and therefore, religious discrimination to discipline her for it. But it wasn't; she had been disciplined for her unwanted and unwelcome behaviour towards a colleague. That was something different altogether, particularly when taking into account Ms Wasteney's more senior position. Her claim failed at the tribunal and at the Employment Appeal Tribunal.

There was also a human rights angle. Had Ms Wasteney's right to freedom of thought, conscience and religion been breached? No. That right doesn't give people 'a complete and unfettered right to discuss or act on [their] religious beliefs at work irrespective of the views of others or [their] employer', the tribunal said.

So the way in which religion or belief is manifested is all-important to whether disciplinary action is appropriate or not. It's something that takes a careful analysis.

Back to Top

Prosecuted for taking personal information

The temptation for departing employees to take one or two pieces of useful information with them is sometimes too much.

One ex-employee has found out to his detriment that the Information Commissioner's Office doesn't take kindly to this.

He was prosecuted for emailing details of 957 clients to his personal email address as he was leaving to start working for a rival company.

The documents contained personal information, which included customers' contact details, purchase history, and commercially sensitive information. A guilty plea followed, and a fine, costs and victim surcharge imposed.

While there may be little an employer can do to prevent these sorts of breaches happening (the offence, by the way, was unlawfully obtaining data), the possibility of a conviction – in addition to civil remedies – could be the deterrent that is needed.

Back to Top

Victory for Victims in modern slavery case

A chicken-catching company has become the first British business to be found liable to compensate victims of human trafficking.

Six men from Lithuania had claimed that they were severely exploited. That included being denied sleep and toilet breaks, and living and working in inhumane and degrading conditions.

The company has been ordered to pay compensation for, among other things, unlawfully withholding wages and depriving the men of facilities to wash, rest, eat and drink. The level of that compensation is yet to be decided.

The men were reported to have worked on farms, eggs from which were supplied to businesses that sell to supermarkets. It's a warning to employers that modern slavery in supply chains is a very real possibility.

If you haven't yet got to grips with your obligations to eradicate modern slavery – which includes servitude, forced or compulsory labour and human trafficking – from your business and supply chain, do it now. Even if you are not one of the £36m+ turnover businesses that has to publish an annual statement on this, your place in their supply chain could be in jeopardy if you don't also ensure that your own suppliers, and even your suppliers' suppliers, aren't engaged in some form of modern slavery.

Back to Top

Restrictive covenants judged as at 'Day One'
Bartholomews Agri Food v Thornton

Do you keep employees' restrictive covenants under review? As business needs and other circumstances change, you could find that covenants become unenforceable.

But in *Bartholomews Agri Food v Thornton*, the High Court held that a restrictive covenant that wasn't enforceable to begin with didn't become enforceable when the employee was promoted to a role that would justify a restriction along those lines. In other words, enforceability is judged as at the time the contract is signed.

For Mr Thornton, that time was at an early stage in his career when he was a trainee agronomist. In his contract was a clause that read:

"Employees shall not, for a period of six months immediately following the termination of their employment be engaged on work, supplying goods or services of a similar nature which compete with the Company to the Company's customers, with a trade competitor within the Company's trading area, (which is West and East Sussex, Kent, Hampshire, Wiltshire and Dorset) or on their own account without prior approval from the Company. In this unlikely event, the employee's full benefits will be paid during this period."

An inappropriate restriction to place on a trainee agronomist and unenforceable, said the High Court. And even though, by the time Bartholomews wanted to rely on the clause, Mr Thornton was a full-fledged agronomist, that didn't convert the clause into a reasonable, enforceable one. Aside from the fact that the clause was still too widely drafted to work, it was unenforceable at the beginning and it remained unenforceable, regardless of Mr Thornton's promotion.

A stark warning, then, that not only do you need to get your covenants right to begin with, but you should review them periodically and as employees rise through the ranks.

Back to Top

And finally...Brexit uncertainty

Everything's a bit uncertain at the moment, isn't it?

For many workers, that's been a theme for some time. Four and a half million people England and Wales are in some form of insecure work. That's according to the Citizens Advice analysis of figures produced by the Office of National Statistics. Variable shift patterns, temporary contracts, and zero hour and agency contracts are at the heart of this.

Citizens Advice has found that when it comes to job searches, a steady, reliable income is as important to people as the amount of take-home pay on offer. A stable job and regular pay is believed to lead to greater productivity and loyalty towards employers.

What will Brexit mean in all this? We don't know, of course. Time will tell what the effects, good or bad, will be on workers' feelings of security and on their ability to manage their finances and plan for the future. But until then, the speculation, the analysis - and the uncertainty – will roll on.

Back to Top

Opening Hours: 9:00am - 5:30pm | Monday - Friday

Wokingham Office
22-24 Broad Street
Wokingham
Berkshire
RG40 1BA
T: +44 (0)118 978 0099

Reading Office
County House
17 Friar Street
Reading
Berkshire RG1 1DB
T: +44 (0)118 957 3425

info@cliftoningram.co.uk
cliftoningram.co.uk