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Employment Law NEWS

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Compensation

Woman subjected to sexual advances at work awarded £24,000

An employer who told a woman that sexual advances from a Spanish colleague were just cultural differences has been ordered to pay her £24,000 compensation.

The woman, who has not been named, worked for **Lincolns Care Ltd**, supporting people with mental health and learning disabilities.

While she was at work, a colleague, Juan Jose Guera Landazuri, tried to kiss her. She put it down to cultural differences and dismissed it from her mind.

However, two days later, he tried to kiss her again by grabbing her face and attempting to put his tongue in her mouth. On other occasions he ran his hands across her back and touched her bottom and her breast. He also asked questions about her sex life.

The woman complained to her employer but was told the incidents were down to cultural differences and she should simply push him away.

She then reported Landazuri to the police. Their investigations showed that he was a convicted sex offender.

The woman was so upset she signed off sick. She then decided she could no longer continue working alongside Landazuri and so she resigned.

She brought a claim of sex discrimination against **Lincolns Care**. The Employment Tribunal ruled in her favour, saying the company was vicariously liable for the sexual harassment carried out by Landazuri.

She was awarded £24,103 as compensation for injury to feelings and loss of earnings.

Landazuri has since been deported.

CASE DETAILS:

W v Lincolns Care Ltd | Employment Tribunal | Cambridge 28 August 2018 | Judge Foxwell

Bereavement

Parents who lose a child to be granted bereavement leave

Working parents who lose a child will soon be entitled to claim parental leave.

The new Parental Bereavement Leave and Pay Act will give all employed parents the right to two weeks' leave if they lose a child under the age of 18 or suffer a stillbirth from 24 weeks of pregnancy.

Employed parents will also be able to claim pay for this period, subject to meeting eligibility criteria.

The government-backed bill was introduced into parliament in July 2017 as a private member's bill by Kevin Hollinrake, MP for Thirsk and Malton. He said:

> *"Losing a child is the most dreadful and unimaginable experience that any parent could suffer, and it is right that grieving parents will now be given time to start to come to terms with their loss."*

Business Minister Kelly Tolhurst said:

> *"This law makes Parental Bereavement Leave a legal right for the first time in the UK's history."*

The new law is expected to come into force in 2020.

Homophobia

Huge rise in homophobia claims to employment tribunals

There has been a surge in homophobia claims to Employment Tribunals over the last 12 months.

The number of claims involving discrimination on the grounds of sexual orientation rose from 203 in 2016/17 to 377 in 2017/18 – a rise of 85%.

The chief executive of the **Equality and Human Rights Commission**, Rebecca Hilsenrath, said:

> *"There is no room in today's Britain for prejudice and harassment of the LGBT community and sadly these figures show it's still very much a feature of the landscape. This really needs to stop, and quickly.*
>
> *Everyone has the right to a working environment that helps them achieve their full potential."*

She said the figures showed that the introduction of tribunal fees five years ago had discouraged people from bringing claims, but now they were ready to proceed again because the government had abolished fees following a Supreme Court ruling that they were unlawful.

Legal experts say while the abolition of tribunal fees was partly responsible for the increased number of claims, it was also likely that changing attitudes played a major part.

Victims of homophobic discrimination have become more assertive and aware of their rights. They are less likely to suffer in silence as they may have done in the past, and more likely to take legal action to protect themselves.

The rise in claims relating to homophobia reflects an overall rise in tribunal claims since the abolition of fees.

Figures released by the Advisory, Conciliation and Arbitration Service (ACAS) show that notifications to bring a claim increased in the year to July 2018 by 17,000 (19%). The number of cases that went on to appear before a tribunal rose by 7,000 (39%).

The ACAS helpline received 783,000 calls in the year to July. The top three categories were discipline, dismissal and grievances; contracts; wages and the national minimum wage.

Businesses may wish to check that their employment policies are up to date to reduce the risk of costly and time-consuming claims from employees.

Unfair dismissal

Driver 'unfairly dismissed' over fuel spillage is reinstated

The dismissal of a tanker driver for spilling fuel on a Tesco forecourt was unfair despite him being blameworthy.

That was the decision of the Employment Tribunal, which reinstated him and awarded him £23,000 compensation.

The case involved Mr D Nolan who had worked for **XPO Bulk UK Ltd** since 2010. In December 2015, he delivered fuel to a **Tesco** store in Chichester.

He carried out the required checks before commencing but as he filled one of the tanks, the alarm sounded. Mr Nolan checked the system but didn't find any warning lights on the driver-controlled delivery box.

He said the alarm sounded again but there were still no warning lights, so he shut down the alarm and continued doing some paperwork.

He later realised he had misread the amount of space left in the tank and pressed the emergency stop button. As he did so, a **Tesco** staff member informed him that fuel had spilled on to the forecourt.

The Fire Service was called to inspect the scene and make it safe. This simply involved cleaning up and spreading sand over the affected area, which was then declared safe.

Mr Nolan faced a disciplinary hearing and was dismissed without notice for having brought the company into disrepute.

He brought a claim to the Employment Tribunal, which ruled in his favour after hearing that the company had been warned previously about a possible sensor fault in the tank involved in the spillage. Mr Nolan was not told about this.

The judge held that Mr Nolan had been "culpable or blameworthy" but nevertheless his dismissal was "unfair as he would not have been dismissed by a reasonable employer" for his mistake in assessing the situation.

The tribunal awarded him £23,000 for loss of earnings and benefits. It also ordered that he should get his job back.

CASE DETAILS:

Nolan and XPO Bulk UK Ltd | Employment Tribunal | Judge G Tobin | East London March 2018

TUPE

Removal of travel allowance 'did not contravene TUPE'

A decision to remove an 'outdated and unjustified' travel allowance did not contravene an employer's obligations under TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006).

That was the decision of the Employment Appeal Tribunal (EAT) in a case involving a team of electricians.

The EAT was told that the electricians had worked for **Bristol City Council** before being transferred to a company called **Mears Ltd**.

While at the council they could claim the Electricians Travel Time Allowance, which had been operating since 1958.

The company wanted to update working practices and so gave notice that the allowance would be scrapped as it was outdated and unjustified.

The electricians claimed this contravened TUPE as the allowance had been available before the transfer.

The Employment Tribunal found in favour of the employer, ruling that the reason for ending the allowance was not because of the transfer but simply because it was outdated.

The EAT has upheld that decision.

CASE DETAILS:

Tabberer, O'Gorman, Roberts, Palser and Mears Ltd | Employment Appeal Tribunal | Judge Eady QC | February 2018

Injury benefits

Court clarifies when NHS employees can claim injury benefits

A hospital consultant has won a claim for injury benefit against the NHS. In granting his appeal, the High Court set out the correct approach to be taken when assessing such claims.

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David Stewart was a consultant paediatrician with **NHS Business Services Authority**. He took professional paid leave, approved by his employer, to speak at a conference in India. After the conference, he took annual leave travelling elsewhere in India.

At some point, he contracted dengue fever from a mosquito bite. He suffered serious consequences, eventually leading to inability to work. He applied for temporary injury allowance. The allowance was payable to an NHS worker by reference to National Health Service (Injury Benefits) Regulations in the case of 'a disease which is contracted in the course of his employment and which is wholly or mainly attributable to his employment'.

A doctor's report stated that there was no corroboration of when Mr Stewart had been bitten, but that there was no medical evidence to contradict his account of having been bitten at the conference.

The employer, an adjudicator and the ombudsman all found against Mr Stewart on the basis that he had failed to provide evidence that he had contracted the disease at the conference rather than on annual leave, and that in any event he had not attended the conference as part of his employment.

The High Court has overturned that ruling. In doing so it outlined the process by which such cases should be decided.

The first step was to identify the disease. The second was to identify the employee's contractual duties by reference to their contract of employment. The third was to ask whether the disease was contracted in the course of employment. If the answer to the third step was yes, the fourth step was to ask whether the employment was the whole or main cause of the disease being contracted.

If the answer to the third or fourth step was no, the fifth step was to ask whether the 'duties of employment' were the whole or main cause of the disease being contracted.

The court considered each point in turn and found in favour of Mr Stewart each time. It held that, on the evidence, he had clearly established on the balance of probabilities that the infected bite had happened at the conference while he was there for employment purposes and so he was entitled to claim injury benefit.

CASE DETAILS:

[2018] EWHC 2285 (Ch) | David Stewart v NHS Business Services Authority (2018) | Ch D (Judge Stephen Davies) | 29 August 2018

Disability discrimination

Prison inspector loses disability case, but court criticises employer

A prison inspector has lost his claim of disability discrimination, but the case led to the Court of Appeal criticising the approach taken by his employer, the Ministry of Justice.

Dr Peter Dunn started working as a prison inspector in 2010. He began suffering from depression in 2012, which led to him taking time off work in the spring of 2014.

His illness persisted, and he applied for early ill-health retirement in November 2014.

His application led to a long, drawn out process lasting 13 months. Dr Dunn blamed the delay on unnecessary bureaucracy within the prison service. His line manager also expressed concerns about the lack of progress.

When his ill-health retirement assessment was eventually issued, it contained several errors, which took two months to correct. The final decision to allow his retirement wasn't made until December 2015.

Dr Dunn retired the following February and brought 16 complaints of disability discrimination and harassment.

The Employment Tribunal dismissed 10 of the complaints but allowed three. He was awarded £100,000 compensation. That decision was overturned by the Employment Appeal Tribunal (EAT).

The case went all the way to the Court of Appeal, which also ruled against Dr Dunn. It held that although the **MoJ**'s processes were slow and unwieldy, they were not so deficient that they amounted to discrimination.

However, Lord Justice Underhill, was critical of the **MoJ**. He said:

> *"...it is no credit whatever to the **MoJ** that its ill-health retirement processes, which by definition are applied to people who are to a greater or lesser extent vulnerable, are so... arcane and unwieldy; and I would endorse the EAT's recommendation that they be reconsidered."*

This is a case that was brought because of the inadequacies of the **MoJ**'s processes for dealing with a straightforward request for ill-health retirement. Employers may wish to check their own policies for such matters to reduce the risk of claims that can be both costly and time-consuming.

CASE DETAILS:

Dr Peter Dunn and 1. Secretary of State for Justice 2. HM Inspectorate of Prisons | Court of Appeal | Lord Justice Underhill