



UK Employment Law Update – May 2022

Welcome to our monthly newsletter, with a summary of the latest news and developments in UK employment law.

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Case law updates



Constructive unfair dismissal: 'Dismissal' for unfair dismissal purposes includes where an employee has resigned in response to a repudiatory breach of contract. In this case, the Employment Appeal Tribunal (EAT) has reminded us that a repudiatory breach may still arise where complaints have been remedied, or where the event triggering resignation is the 'last straw' in a history of events which, when taken together, amount to a repudiatory breach. In this claim, the claimant resigned when he failed to receive a back-pay payment by a promised date. This was found to be a genuine mistake, but the EAT considered that the overall history of a lengthy hours and pay dispute, despite being redressed through the grievance procedure, should have been considered under the last straw principle. (*Craig v. Abellio*)

Indirect discrimination: The claimant brought an indirect sex discrimination claim when her flexible working request was only partially accepted, leaving her required to guarantee availability on a Thursday late shift. She argued that this guarantee was a provision, criterion or practice (PCP) which placed her at a significant disadvantage because of her sex and her childcare responsibilities. The EAT considered the relevant comparison pool, confirming and reminding us that it should be with reference to the claimant's pleaded PCP. In this case the employment tribunal had erroneously included two colleagues in the pool for comparison despite them not being subject to the same level of compulsion to be available for the late shift, rather than relying on the specific PCP pleaded by the claimant. The case will now be reconsidered by the tribunal, which can also assess whether the PCP is objectively justified. (*Allen v. Primark*)

Redundancy: A claimant has not been precluded from bringing an unfair dismissal claim in circumstances where she accepted voluntary redundancy. The EAT determined that it had been wrong to strike out her claim as having no reasonable prospects of success as there were triable issues in respect of whether, as alleged, the redundancy process was a sham, and over the fairness of the process. (*White v. HC-One Oval*)

Legislative developments

Fire and rehire: Last month we reported how the government announced its intention to introduce a new statutory code on the practice of fire and rehire. In response to questions about timings, it will be introduced "when Parliamentary time allows". The statutory code is expected to detail the consultation process to be followed where there are proposed changes to terms and conditions, and to give practical steps for employers to follow. It is also expected that employment tribunals will be given power to uplift compensation by up to 25 per cent where there is unreasonable non-compliance.

Other news

Redundancy: A survey commissioned by Acas has found that 18 per cent of UK employers are likely to make redundancies in the next 12 months. Employers with over 250 employees were reported as the most likely to make redundancies, with 30 per cent considering doing so. Planning and implementing redundancies require careful thought, with a number of legal, practical and pastoral considerations. Read some of our tips on redundancy on the [Employment Law Watch blog](#).

Sex and gender reassignment: The Equality and Human Rights Commission has issued guidance for separate and single sex service providers on the approach to use of their service by trans people. It provides general principles, practical advice, and a reminder of the legal position under the Equality Act 2010.

Consultations

Employment law compliance and enforcement: BEIS has issued a [call for evidence](#) in relation to a number of challenges and risks to labour market compliance and enforcement. It concentrates on the operation of the UK labour market; workforce and business engagement; the availability of workers, including immigration; recruitment and different models of employment; and resourcing of enforcement. Views can be submitted online until **31 May 2022**.

Mental health: The Department of Health and Social Care has published a discussion paper and [call for evidence](#) on what can be done to improve mental health and wellbeing. The call for evidence is open to all for comment, although it is recognised that employers play a significant role. Anyone wishing to participate can do so online until **5 July 2022**.

Publications

[Reed Smith launches its seventh annual EMEA Responsible Business Report](#)

Upcoming events

(Register using the link below)

[Mental Health Summit](#) – 17 May 2022 16.30 – 20.00 (BST)



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