



June 2009

EMPLOYMENT NOTEPAD

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1. **Holiday Pay – *Stringer v HMRC***

The House of Lords has given its decision in the long running case of *Stringer v HMRC* (previously known as *Ainsworth v Commissioner of Inland Revenue*).

In brief, this confirmed that workers may bring claims for statutory holiday pay as a deduction of wages under Part II of the Employment Rights Act 1996. This allows workers to exploit the more generous time limits relating to the deduction of wages claim. It also allows workers to recover unpaid sums in relation to previous holiday years.

The judgement also confirms that workers are entitled to accrue and to be paid in relation to holiday pay whilst off sick - even in situations where they may have exhausted their entitlement to statutory or contractual sick pay.

This case has important implications for employers who should monitor and ensure that workers on sick leave accrue and are paid for holiday, even where their statutory and contractual entitlements to sick pay have been exhausted.

A more detailed analysis of the decision in *Stringer* will be provided shortly in a separate Focus Sheet.

2. **Reinstatement – Claimant's Dishonesty is a Relevant Factor**

In *Central and North West London NHS Foundation Trust v Abimbola*, the EAT considered whether a Claimant's dishonest conduct during a remedy hearing should be taken into consideration by the Tribunal when considering a reinstatement order.

The Claimant was dismissed from his position as a Psychiatric Nurse for allegedly assaulting a patient. He successfully brought a claim of unfair dismissal and was reinstated.

The Respondent appealed the Tribunal's decision to reinstate Mr Abimbola on the basis that he had given evasive and, on one occasion, dishonest evidence during the Tribunal hearing relating to his earnings since his dismissal.

Having claimed not to have done a day's work since his dismissal it later transpired during cross-examination that he had worked and earned around £900. The Respondent argued the Claimant's conduct meant the Respondent could no longer trust him and that the Tribunal should have considered this when ordering reinstatement.

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The EAT allowed the appeal on the basis that the employer's ability to have trust and confidence in the employee was a relevant factor when considering reinstatement. It therefore ordered the case be remitted to the Tribunal to determine an award for compensation.

3. Extension of Time

In *Eagles v Rugged Systems Ltd*, the EAT held that where a Claimant reasonably believed that there was "some process" ongoing in respect of their dismissal they would be entitled to an automatic extension of time in which to present their claim to an Employment Tribunal.

The Claimant was an office manager for a small business. Upon being made redundant, she entered into negotiations for a Compromise Agreement with the Respondent. Three months later negotiations were still ongoing and, accordingly, the Claimant did not submit her claim to the Employment Tribunal in time.

Negotiations subsequently failed and the Claimant submitted her claim some twenty two days after the normal three month deadline. She assumed the automatic extension of time applied as her appeal was ongoing.

The EAT found in favour of the Claimant on the basis that, at the time of the expiry of the three month deadline, she held a reasonable belief that a procedure was still ongoing for resolving all outstanding issues relating to her employment.

4. Costs

In *Verma v (1) Harrogate and District NHS Foundation Trust (2) Mockford*, the EAT confirmed that it was perverse for a Tribunal to make an award in relation to the recovery of a party's barrister's costs but not their solicitor's costs.

Following the Respondent's unsuccessful application to strike out the Claimant's claim, the Tribunal made an order that they pay the Claimant his barrister's costs only. The rationale for limiting the order appeared to be that the strike-out application was considered at a Pre-Hearing Review at which the parties were also to receive general case management directions.

The EAT considered this an irrelevant consideration as the case management directions could have been given in a far more cost effective Case Management Discussion that could have been conducted by telephone.

However, because of the Respondent's application, a Pre-Hearing Review was required for which the Claimant was forced to prepare. Accordingly, he should have been entitled to recover the costs of both his solicitor and barrister.



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5. Increased Redundancy Payments

In our April Notepad, we informed you of the Government's plans to increase the maximum weekly statutory redundancy payment from £350 to £380. At the time, the Chancellor did not indicate from when the increase would be effective.

It has since been confirmed that the increase will come into force on 1 October 2009. As a result of this, the usual increase which occurs in February every year will be postponed until February 2011.

6. BERR now BIS

The Department of Business, Enterprise and Regulatory Reform, otherwise known as BERR, is to undergo another change of name having itself only been formed approximately two years ago. BERR will merge with the Department of Innovation, Universities and Skills (DIUS) to form the Department for Business, Innovation and Skills, BIS for short. The primary role of BIS is to lead the fight against the recession by building Britain's capabilities to better position the UK to compete in the global market.

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