



Employee Benefits Conference

Tuesday 30th September 2008

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Overview

- Recent developments
- White collar crackdown
- Redundancy issues
- Disability discrimination
- Data protection
- Questions

Stop Press (1)

- Age discrimination
- Compulsory retirement age – 65
- Heyday challenge
- Advocate - General (23/09/08)
- General justification defence legitimate
- Reg 30 not incompatible with EU law

Stop Press (2)

- Statutory dispute resolution procedures
- Employment Bill 2007-2008
- April 2009 - repeal – SGDP
- New statutory Code of Practice
- Employment tribunals – discretionary powers to adjust awards

Stop Press (3)

- Work and Families Act 2006
- EWC on or after 5 October 2008
- Equalisation of OML and AML
- Flexible working rights extended – April 09
- SMP 39 → 52 weeks – April 2010?
- Transfer of maternity leave to fathers – April 2010

Stop Press (4)

- Companies Act 2006
- Codification of directors' duties
- 1 October 2008

White Collar Crackdown

- Shepherds Investments v Walters
- Acting in best interests of company
- Avoiding conflicts of interest
- Preparing to compete

Restrictive Covenants (1)

- Are they enforceable?
- Legitimate business interests
 - Goodwill
 - Customer connections
 - Trade secrets
 - Confidential information
 - Stable and trained workforce

Restrictive Covenants (2)

- Beckett Investment Management v Hall
- Financial services
- 12 months – non-deal/non-solicit - upheld

Restrictive Covenants (3)

- Seniority/importance
- Business patterns
- Logistics of replacing
- Industry standard

Restrictive Covenants (4)

- Thomas v Farr plc
- Insurance
- 12 months – non compete – upheld
- Confidential information

Restrictive Covenants (5)

- UBS Wealth Management v Vestra Wealth
- Team move – 75 staff
- Springboard injunction

Garden Leave

- Express term
- Right to work?
- William Hill v Tucker
- SG&R Valuation Service v Boudrais

Practical Tips

- Audit restrictive covenants – do they work?
- Pilon clause:
 - Tax downside but give flexibility
 - Base salary
 - Instalments
- Garden leave clause – safer than covenants
- Bespoke terms
 - e.g. Duty to disclose covenant to prospective employer before accepting job

Redundancy (1)

- Section 139(1) ERA
- Close down
- Place of work
- Requirements of the business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish
- Collective redundancies

Redundancy Fair Procedure

- Warning
- Consultation
- Fair Selection
 - Pool for selection
 - Selection criteria
- Suitable Alternative Employment

Pitfalls (1)

- SDP
- Alexander v Bridgen Enterprises
- Step 1 meeting
- Provisional scores

Pitfalls (2)

- Selection criteria
- Objectivity
- Guidance for scorers
- Explanation for employees
- Consistency

Pitfalls (3)

- Bumping
- Murray v Foyle Meats

Pitfalls (4)

- Mobility clauses
- Contract versus place of work test

Disability Discrimination (1)

- Lewisham LBC v Malcolm
- Comparators
- Rule in Clark v Novacold overturned

Disability Discrimination (2)

- Who is protected?
- Coleman v Attridge Law
- Discrimination by association

Disability Discrimination (3)

- Reasonable adjustments
- Sick pay – O’Hanlon
- Disability related sickness absence – Dunsby case
- Alternative jobs - Archibald

Data Protection (1)

- Subject access requests – s7 DPA
- In writing
- Fee - £10
- 40 days
- Personnel files – relevant filing system?
- Exemptions – third parties/references/management planning forecasting/negotiations/legal professional privilege

Data Protection (2)

- Is it “personal data?”
- Focus – “information which affects his privacy”
- Biographical
- Opinion
- Indications of intention about data subject

Data Protection (3)

- Search required
- *Ezsias v The Welsh Ministers*
- Reasonable and proportionate

Questions?

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