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UK Employment Law Update – March 2025

Our March 2025 update provides the usual round-up of interesting recent cases, including on the protection of philosophical and religious beliefs in the workplace, and an employment tribunal decision with potentially far-reaching implications for all unlawful deductions from wages claims. We also provide an update on the Labour government's employment law reforms, with particular focus on the recent publication of an Amendment Paper in relation to the Employment Rights Bill.

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Case law updates

Unlawful deductions from wages: In an influential decision, which is likely to be appealed, an employment tribunal (ET) held that the current two-year backstop on all claims for unlawful deductions from wages is void. The ET noted that the two-year backstop was implemented using regulations made under the (now repealed) European Communities Act 1972 (ECA). The ET accepted that the government was authorised to apply a two-year backstop on the enforcement of the EU-derived right to holiday pay, but ruled that it was not Parliament's intention for section 2(2) ECA to be used to interfere with primary domestic rights, especially those as fundamentally important as the right not to suffer unlawful deductions from wages. The ET held that it would have required primary legislation to lawfully apply the two-year limit to all claims, and therefore that the two-year backstop was *ultra vires* and of no effect, opening the door to the claimant claiming multiple years of deductions rather than being limited to only two years (*Afshar v. Addison Lee Ltd*).

Participation in the activities of trade unions: The Court of Appeal (CA) has ruled that it is unlawful to blacklist an employee for merely taking part in the activities of trade unions. In this case, the appellants were airline pilots and members of an independent trade union (BALPA). In 2019, the employer withdrew the pilots' concessionary travel benefits for 12 months after they participated in a strike organised by BALPA. Under an earlier ruling by the Employment Appeal Tribunal (EAT), the employer was free to blacklist all the employees who had taken part in the strike. The CA found that the natural meaning of "activities of an independent trade union" for the purposes of section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 included organising industrial action, in line with the judgment of the Supreme Court in *Mercer v. Alternative Future Group Ltd*. It followed that regulation 3 of the Employment Relations Act 1999 (Blacklists) Regulations 2010 should be given its ordinary meaning so that it is unlawful to blacklist an employee for the simple act of taking part in the activities of trade unions, including industrial action organised by a trade union (*Morais v. Ryanair DAC*).

Injury to feelings awards: The EAT has provided useful guidance on compensatory awards for injury to feelings in discrimination cases, with insight offered into the application of the different *Vento* bands (*Vento v. The Chief Constable of West Yorkshire Police*). The EAT noted that, while there must be some evidence of injury to feelings before an award could be made, claimants would normally suffer some degree of injury to feelings in discrimination cases. Therefore, when evidence of injury to feelings is sparse, the EAT suggested that the manner of discrimination could indicate the level of injury, provided that the tribunal keeps in mind that it is compensating the claimant for the injury and not the manner of discrimination. The EAT noted that there was a significant gap in the factual scenarios encompassed by the *Vento* bands

and concluded that, apart from the frequency and duration of the claimant's exposure to discrimination, other relevant considerations could include: (1) whether the discrimination was overt; (2) the existence of ridicule or exposure; and (3) whether the discrimination showed an imbalance of power, influence and information. The EAT stated that the parties could contribute positively by giving it more direct evidence, with the burden being on the claimant to show that their feelings were injured and, importantly, to what extent (*Eddie Stobart Ltd v. Graham*).

Expression of philosophical belief: Was a pastoral administrator and work experience manager, who was dismissed for gross misconduct after someone complained to the school she worked at about Facebook posts she had made criticising the teaching of sex education, and specifically "gender fluidity", in schools unlawfully discriminated against by her employer? Yes, concluded the CA in a case that was widely reported in the press. The Facebook account was in the employee's maiden name and contained nothing that suggested any connection with the school. The CA held that it is necessary to judge an employee's statement by what is actually said, rather than by what some readers of the statement (in this case the parents of children at the school) might choose wrongfully to read into it. He noted that this is particularly important in the realm of social media posts, where messages are often read hastily and without any consideration as to the meaning. The CA concluded that, although the school may have been entitled to object to the language used in the Facebook posts, its decision to dismiss was a disproportionate response. There were multiple factors which contributed to this finding, including the fact that: (1) the language used of "the LGBT crowd" may be objectionable, but is not grossly offensive and did not incite hatred; (2) the language did not come from the employee, but from reposts of others' messages; (3) there was no actual evidence that the reputation of the school had been damaged; and (4) even if the readers feared that the employee would let her views influence her work, neither the employer nor the tribunal believed that this was truly the case (*Higgs v. Farmor's School*).

Unfair dismissal: In order for an employer to successfully defend an unfair dismissal claim, it must initially show it had a potentially fair reason for the dismissal. One such reason is "some other substantial reason" (SOSR). In this recent decision, the EAT looked at a scenario where an employer genuinely, but mistakenly, believed that an employee had resigned. The EAT ruled that in such a scenario it is open to the ET to conclude that the dismissal was for SOSR and that the employer had a potentially fair reason for dismissal. In assessing the fairness, the ET should then go on to consider whether the person who mistakenly believed that the employee had resigned had taken the steps that any reasonable employer would take to ascertain whether the employee had in fact resigned, prior to acting upon that belief (*Impact Recruitment Services v. Korpysa*).

Desk move treated as demotion: An employee is entitled to resign and claim constructive dismissal in circumstances where their employer has breached the implied term of trust and confidence. In this case, an ET concluded that a branch manager at an estate agents had been constructively dismissed when, after he transferred to a new branch, he was told that he would be sat in the middle of the office, rather than at the back. The ET noted that the desk at the back of the office had a "symbolic significance" as it was where the branch manager would traditionally sit. The ET held that the desk move was perceived as a demotion and breached the implied term of trust and confidence (*Walker v. Robsons (Rickmansworth) Ltd*).

Employment Right Bill update

On 5 March 2025, an Amendment Paper setting out significant amendments to the Employment Rights Bill (ERB) was published in response to various consultations. These proposed amendments include:

Zero hours contracts: The ERB aims to introduce a right to guaranteed hours in zero hours contracts, which is anticipated to be 12 weeks. Following this Amendment Paper, the obligation to offer guaranteed hours will rest with the end user of the worker's services, but it will be possible to place this obligation on agencies. Agencies will have to make payments to workers if there are short-notice cancellations, movements or curtailments of a shift. Agencies and hirers will

remain free to negotiate terms, so the agency may recoup these costs from the hirer where the latter was responsible for the shift change. For pre-existing contracts, agencies will be allowed to recoup costs to the extent the hirer was responsible.

Dismissal and re-engagement: The maximum period of the protective award for failing to adhere to collective consultation requirements will be doubled from 90 to 180 days. The government has confirmed its intention to continue gathering views on strengthening the collective redundancy framework and on updating the Code of Practice on Dismissal and Re-engagement so that it reflects the ERB's "fire and rehire" provisions, e.g., the new right to claim automatically unfair dismissal if the reason for the dismissal was that the employee did not agree to the employer's requested variation of contract. There will be no interim relief available to employees who make claims for the protective awards or unfair dismissal in a "fire and rehire" situation as described above.

Trade unions: Numerous amendments are set to take effect in relation to trade unions. These include strengthening protections against "unfair" practices during the statutory recognition process, simplifying the current information requirements for industrial action ballots and notices, extending the expiry of a trade union's mandate for industrial action to 12 months, and providing for a digital right of access to the workplace for collective bargaining purposes.

Statutory sick pay: The ERB proposes to remove the requirement that an employee must earn above the lower earnings limit (due to increase to £125 in April) in order to be eligible for statutory sick pay (SSP). The government has announced that SSP will be set at 80% of the SSP flat rate where 80% of an employee's normal weekly earnings is less than the flat rate.

Right to switch off abandoned: In Sir Keir Starmer's "New Deal for Working People", a legal right to "switch off" outside working hours was proposed. While it was not included in the ERB, it was expected to be added later. Reports now suggest that the government has abandoned its plans to include the right to switch off in the ERB.

On 11 and 12 March 2025, these proposed amendments were considered and accepted at the House of Commons report stage, and the third reading of the ERB took place. Following this stage, the ERB will pass to the House of Lords, although there is no confirmation as to the exact date for the first reading.

Legislative developments

Statutory neonatal care leave and statutory neonatal care pay (SNCP): Legislation giving a day-one statutory right to leave and pay for parents of babies requiring neonatal care will, subject to parliamentary approval, be in full force by 6 April 2025. The new right provides for up to 12 weeks of leave and pay in the first 68 weeks after birth (if eligibility criteria are met) for babies who require a continuous stay of seven days or more in hospital within the first 28 days of life. On 24 February 2025, the Statutory Neonatal Care Pay (Administration) Regulations 2025 SI 2025/206 were introduced, providing for employers to be reimbursed for SNCP payments through deductions from income tax, national insurance contributions and other payments. They also impose obligations on employers in relation to SNCP payments, including maintaining records for HMRC inspection and informing employees if they will not receive or will stop receiving SNCP.

Minimum wage: From **1 April 2025**, the minimum wage will increase to £12.21 per hour for workers aged 21 and over, £10 per hour for 18-20 year-olds and £7.55 for 16-17 year-olds and apprentices.

Statutory rates and limits: The Department for Work and Pensions has announced planned increases to various statutory payments, effective from **6 April 2025**. These see SSP increase to £118.75 per week, the statutory rates for maternity pay, maternity allowance, paternity pay, adoption pay, shared parental leave pay, parental bereavement pay and neonatal leave pay rise to £187.18 per week, and the lower earnings limit increase to £125. In addition, the Employment Rights (Increase of Limits) Order 2025 impacts some tribunal awards, increasing the maximum compensatory award for unfair dismissal claims to £118,223 and the minimum basic award for certain unfair dismissal claims to £8,763. The Order also sees the limit on a week's pay used to calculate compensatory awards increase to £719.

Other news

Proposed increases to court and tribunal fees: The Ministry of Justice announced proposed increases to selected court and tribunal fees from **8 April 2025**, which have now been accepted by Parliament. The Court and Tribunal Fees (Miscellaneous Amendments) Order 2025 raises 171 court and tribunal fees to account for changes to the Consumer Price Index. Most of these fees will increase by 3.2%, but a small number will increase by 13.5%. 24 fees will be reduced.

Standards of behaviour for the creative industries: The Creative Industries Independent Standards Authority has launched new minimum standards of behaviour for the creative industries to prevent and tackle bullying and

harassment, including discriminatory behaviour. There are four standards of behaviour: safe working environments, inclusive working environments, open and accountable reporting mechanisms, and responsive learning culture. Organisations, productions and projects can use these standards to assess their existing policies and procedures or create new ones.

Right to work checks: The Home Office has updated the *Employer's guide to right to work checks* to confirm that, from 12 February 2025:

- Individuals who apply overseas and are granted permission to enter the UK for more than six months are issued with a vignette (sticker) in their passport, which is valid for 90 calendar days, allowing them to travel to the UK. Following their arrival, they must create a UK Visas and Immigration (UKVI) account to access their eVisa within 10 calendar days or before their vignette expires (whichever is sooner), to prove to their employer that they have the right to work in the UK.

- If an individual needs to start work in the UK before creating a UKVI account and accessing their eVisa, their employer can conduct a manual right to work check using the individual's 90-day vignette. However, before the expiry of the vignette, the employer must conduct a follow-up online right to work check to maintain their "statutory excuse" against civil penalties for illegal working. If, prior to the expiry of the vignette, the individual is unable to access their eVisa or encounters an error, they should contact UKVI.

Changes to apprenticeships: The government has announced plans to reform the apprenticeship system, with the aim of increasing the number of apprenticeships by up to 10,000 per year. Shorter and more flexible apprenticeships will be introduced to give employers more control over English and maths requirements. The changes will come into effect immediately for English and maths requirements. In addition, the minimum duration of an apprenticeship will be reduced from 12 to eight months from August 2025. These changes will enable apprentices to qualify for roles in high-demand sectors.

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