News Update **28 June 2013**

Investigation into alleged theft not thorough

In Miller v William Hill Organisation Ltd, Miller was a betting shop deputy manager. During a security audit, four bets handled by Miller did not match up with CCTV footage. Miller was summarily dismissed for taking money that should have been paid to customers, despite her explanation that the stakes and winnings were handed over at times not shown on the nine segments of CCTV footage viewed by the employer. The tribunal found the dismissal fair as the investigation had been thorough enough for the employer to form a genuine belief in Miller's misconduct. The EAT disagreed, holding that Miller had been unfairly dismissed. Where there are allegations of criminal behavior, the most careful investigation must be conducted, in particular seeking evidence that might exonerate the employee, because of the serious consequences for the employee's reputation and future employability. William Hill's failure to view the whole of the CCTV footage meant that the investigation was not reasonable in the circumstances, particularly as looking at the footage would not have taken long and would have incurred no expense. So, the more serious the allegation, the more extensive the investigation needs to be, including looking for evidence that may get the employee "off the hook" and not just evidence that supports a genuine belief in guilt.

Redundancy affected by parental leave contrary to EU law

In Riežniece v Zemkopības ministrija and another (a Latvian case), the ECJ held that EU law precludes a situation where, in a redundancy selection exercise, a worker who has taken parental leave is assessed on his or her absence which places that person in a less favourable position compared to workers who did not take parental leave. The employer based redundancy selection on the criteria used for assessing performance from the most recent appraisals, which the employee had not participated in because she had been absent on parental leave for 18 months. Her assessment was based on a previous appraisal when she was at work, where the performance criteria differed. She was subsequently made redundant. The ECJ ruled that any selection exercise must be based on selection criteria which are identical for all potentially affected employees. A failure to do so would contravene the Framework Agreement on Parental Leave and, where many more women than men take parental leave, the Equal Treatment Directive. While this case highlights the difficulties in carrying out a redundancy selection exercise where an employee in the pool has been absent for a long period, it also emphasises the need to try and create a level playing field by using a process which does not place those on parental leave (or indeed any other statutory leave) at a disadvantage.

Nut allergy amounted to disability

In Wheeldon v Marstons plc, an employment tribunal initially had to decide whether a chef's medical condition, a nut allergy rendering him vulnerable to an allergic reaction to nuts, or traces of nuts, is a disability under the Equality Act 2010. The medical evidence showed, among other things that: (i) Wheeldon's blood-test results confirmed a nut allergy; (ii) an allergic reaction can be life threatening and he has to "rule his life" by this risk, including observing a number of nut avoidance measures; and (iii) he carries adrenaline injectors at all times for immediate use when he comes into contact with nuts. The tribunal found that the allergy amounted to an impairment, and that the effect on his ability to carry out normal day-to-day activities was long-term and substantial (i.e. more than minor or trivial) since he had been admitted to hospital on seven occasions for suspected anaphylactic shock, his allergic reaction could be life threatening and he had to adapt his life accordingly. Therefore, Wheeldon does have a disability under the Equality Act 2010 and his discrimination claim could proceed.

New NMW rates confirmed

The National Minimum Wage (Amendment) Regulations 2013 have been published, confirming the new NMW rates which will come into force on 1 October 2013, increasing: the adult rate from £6.19 to £6.31 per hour (ph), the 18 to 20 year old rate from £4.98 to £5.03 ph, the 16 to 17 year old rate from £3.68 to £3.72 ph and the accommodation offset from £4.82 to £4.91 for each day that accommodation is provided.

Restrictions on employment of Croatian nationals

Croatia will become a member of the European Union on 1 July 2013. After 1 July, Croatian nationals will no longer be subject to immigration control and will have an unrestricted right to enter and reside (but not to work) in the UK for up to 3 months. But under the terms of the Treaty of Accession of Croatia, the UK is introducing restrictions. The Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 will mean that for an initial period of five years from 1 July, the employment of Croatian nationals in the UK will be prohibited unless they come within one of the exemptions in Regulation 2 (e.g. those who already have permission to work in the UK) or they are authorised to work under the terms of a worker authorisation scheme set out in Regulations 8, 9 and 10. A penalty notice of up to £5,000 can be issued where an employer employs an accession State national subject to worker authorisation in breach of the Regulations. However, other than where the employer knew that the employment was in breach of the Regulations, they have a defence if they have had one of the specified identification documents produced to them and they have retained a copy. An employer who knowingly employs a person in breach of the Regulations commits a criminal offence punishable by up to 51 weeks in prison and/or a fine of up to £5,000.