

The EAT hold that the non-payment of a bonus due to a warning for disability-related absences amounted to discrimination arising from disability which could not be justified.

With just 8 weeks to go until eligible parents can start sharing up to 50 weeks of parental leave, Acas have produced an online guide providing 5 'top tips' for employees who intend to exercise the statutory right.

The Employment Rights (Increase of Limits) Order 2015 will increase the compensation limits and minimum awards that apply to a range of employment claims from 6 April 2015.

The results of the Freedom to Speak Up independent review have been published containing proposals for creating an honest and open reporting culture in the NHS.

A BIS analysis paper reviews the impact of compliance with the Working Time Regulations 1998 on the UK labour market, which is assessed as minimal, other than appellate court decisions on the calculation of holiday pay.

### **Non-payment of bonus due to warning for disability-related sick absence was discrimination arising from disability**

Under S.15 of the Equality Act 2010 (EA 2010) discrimination occurs where a disabled person is treated unfavourably not because of the person's disability itself but because of something arising from, or in consequence of, his or her disability, such as the need to take a period of disability-related absence. However, such treatment can be justified if it can be shown to be a proportionate means of achieving a legitimate aim.

In [Land Registry v Houghton and others](#), the EAT agreed with an employment tribunal that the Claimants had been treated unfavourably because of something arising in consequence of their disability. The Claimants were not paid a bonus of £900 in 2012 because under the terms of the scheme an employee who received a formal warning in respect of sickness absence during the relevant financial year was ineligible to receive the bonus and each had a number of sick absences, in every instance attributable to their disability. Therefore, non-payment of the bonus was the consequence, result, effect or outcome of each Claimant's disability.

Turning to justification, it was accepted that the employer had a legitimate aim, i.e. acknowledging employees' contributions towards corporate achievements and specifically to encourage and reward good performance and attendance. But the scheme was not a proportionate means to achieve that aim because: (a) having decided to issue a warning for sick absence the manager had no discretion to decide that the employee would not be excluded from receiving the bonus, unlike the position with a warning for conduct, and no explanation for that anomaly was forthcoming; and (b) no account could be taken of any improvement in performance post-warning in circumstances where the legitimate aim of the bonus scheme was to reward good performance and attendance, but yet three of the Claimants had improved their absence record after receiving the warning.

This case provides a good example of how S.15 EA 2010 works in practice. Employers need to be conscious of the fact that any action taken (whether policy-driven or not), which arises from, and is therefore a consequence of, disability, such as a poor sickness absence record, is open to challenge where it has a negative impact. Where there is a negative impact, then employers need to decide whether to take any action at all. If there are factors which relate to an employee's disability then employers must ensure there is justification, i.e. there is a legitimate business aim and the means chosen to achieve that aim demonstrate that the benefits to the business outweigh the discriminatory effect and there is no other less discriminatory way.

### **Order published increasing limits to specified employment tribunal awards**

The [Employment Rights \(Increase of Limits\) Order 2015](#) has been published and will increase the compensation limits and minimum awards that apply to a range of employment claims. The increases made by the Order reflect the increase in the retail prices index of 2.3% from September 2013 to September 2014. The new limits can be found in the Schedule to the Order and the key changes are as follows:

- The limit on the compensatory award for unfair dismissal increases from £76,574 to £78,335.
- The maximum amount of "a week's pay" for the purpose of calculating a redundancy payment or for various awards including the basic or additional award of compensation for unfair dismissal increases from £464 to £475.
- The minimum amount of basic award of compensation where dismissal is automatically unfair by virtue of sections 100(1)(a) and (b), 101A(d), 102(1) or 103 of the Employment Relations Act 1996 increases from £5,676 to £5,807.

The new rates take effect where the 'appropriate date' for the cause of action falls on or after 6 April 2015. The full list of 'appropriate date' provisions can be found in Article 4(2).

### **Parents-to-be begin the countdown to Shared Parental Leave**

In an online 'top tips' [guide](#), Acas have highlighted that with just 8 weeks to go until eligible parents can start sharing up to 50 weeks of parental leave, for babies due, or where a child is placed for adoption, on or after 5 April 2015, then expectant parents need "to have that all-important conversation with their employers." Acas then set out 5 top tips for

Shared Parental Leave and employers are advised to ensure that these tips aimed at employees are set out appropriately in their policy and procedures and employee guides:

1. The first thing to do is make sure you are eligible for Shared Parental Leave. The quick and easy calculator on [GOV.UK](#) will do the hard work for you.
2. Talk to your partner before speaking to your employer. The combinations are flexible so make sure they fit around your life and work for you as a couple. Maybe you want to double up in the early days for extra support or you might decide to tag-team halfway through - the choice is yours.
3. Have the conversation with your employer as early as you can. The sooner you do, the easier it will be to make plans for your time away from the work. Remember you have to give your employer at least 8 weeks' notice of your intention to take Shared Parental Leave.
4. Check to see if your employer offers an enhanced package (a package over and above statutory), and if they do, what type of package it is.
5. Know your rights. Employers cannot opt out of Shared Parental Leave if you are eligible.

### **Review makes recommendations for creating an honest and open reporting culture in the NHS**

The results of the [Freedom to Speak Up](#) independent review have been published containing proposals for creating an honest and open reporting culture in the NHS. The review was set up last year to address concerns about the treatment of staff who speak up about unsafe patient care and treatment. The report sets out a number of key principles which should be followed to bring about the change required, which include:

- Every organisation involved in providing NHS healthcare should actively foster a culture of safety and learning in which all staff feel safe to raise concerns.
- Freedom to speak up about concerns depends on staff being able to work in a culture which is free from bullying and other oppressive behaviours.
- All employers of NHS staff should demonstrate, through visible leadership at all levels in the organisation that they welcome and encourage the raising of concerns by staff.

While the recommendations focus on the NHS, they could form the basis for a review by all organisations wishing to foster a supportive culture where staff do feel able to raise legitimate concerns.

### **Working Time Regulations had limited impact on labour market, says BIS**

The BIS have published an [analysis paper](#) which comprehensively reviews the available evidence to assess the impact of compliance with the European Working Time Directive, via the Working Time Regulations 1998, on the UK labour market. Key conclusions are as follows:

- The analysis suggests that the impact of the Working Time Regulations has mainly resulted in increased employment of workers doing shorter working weeks, rather than through a reduction in total hours worked.
- Survey evidence demonstrates that the majority of opted-out workers currently working above 48 hours would not want to reduce their hours if it meant less money.
- The principal concerns for employers are around court judgments in relation to: (a) holiday pay and non-guaranteed overtime/sales commission; (b) on-call time and compensatory rest; and (c) the interaction of sick leave with annual leave, where holiday entitlement cannot be taken.

#### **Content**

The aim is to provide summary information and comment on the subject areas covered. In particular, where employment tribunal and appellate court cases are reported, the information does not set out all of the facts, the legal arguments presented by the parties and the judgments made in every aspect of the case. Click on the links provided to access full details. If no link is provided, contact us for further details. Employment law is subject to constant change either by statute or by interpretation by the courts. While every care has been taken in compiling this information, SM&B cannot be held responsible for any errors or omissions. Specialist legal advice must be taken on any legal issues that may arise before embarking upon any formal course of action.