Employment Law News Update 28 November 2014

Comments relating to stress made at a return to work interview constituted disability harassment

In Gardner v Chief Constable of West Yorkshire Police and another, after a 6 week absence due to stress, PC Gardner participated in a return-to-work interview conducted by a Sergeant. When discussing the communication of Gardner's return to work to his colleagues, the Sergeant commented that Gardner had been absent from work because he "went a bit doolally f*****g tap" (meaning to 'lose one's mind', derived from the boredom felt in an Army transit camp) and mentioned "One Flew Over the Cuckoo's Nest", a film which relates to people suffering from mental illness.
Gardner claimed disability harassment, i.e. unwanted conduct related to a disability that has the purpose (intentionally) or effect (unintentionally) of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual. Where the conduct is unintentional, the tribunal has to decide whether it is reasonable to conclude that the definition of harassment has been met, taking into account the 'victim's' perception and the other circumstances of the case.
The tribunal upheld the disability harassment claim. While the comments were not made with the intention of causing offence, the context within which they were made was important. Here, the comments were made by a Sergeant in determining how the news of Gardner's return to work, following sickness absence, would be communicated. In the circumstances, Gardner perceived the Sergeant's remarks as being derogatory and negative about his stress-related illness and as this made Gardner feel awkward and uncomfortable, it was reasonable to find that the definition of harassment had been satisfied.
This case highlights the need for those conducting return to work interviews to be very careful about their choice of words. This should be emphasised through training, accompanied by a return to work interview checklist, which includes references to the organisation's equality policy together with a statement expressing a zero tolerance of any discrimination because of, or harassment related to, the prohibited characteristics in the Equality Act 2010.

New figures show that Acas' Early Conciliation service has dealt with over 37,000 cases

Acas has published its first half year update on Early Conciliation which shows that the service has dealt with 37,404 cases from 6 April 2014 until the end of September 2014. Some notifications are made on behalf of a group of employees. 1,156 of these group notifications are included in the total of 37,404 notifications which covered 8,142 individuals. This means that notifications covering 44,390 employees were received in the first six months. In the first six months, 3,783 (10%) of employees and 3,727 (10%) of employers rejected the offer of conciliation. The status of cases notified in April - June 2014 at end October 2014 where conciliation took place was as follows:

- There was a COT3 Settlement in 3,046 cases (18%).
- 9,918 (58%) cases did not progress to a tribunal claim.
- 4,198 (24%) of disputes progressed to tribunal claim.

ONS figures show that the gender pay gap has narrowed to 9.4%

The ONS study, Annual Survey of Hours and Earnings 2014, shows that the gender pay gap has narrowed, to 9.4% compared with 10.0% in 2013. This is the lowest since records began in 1997. Other key findings were:

- In April 2014 median gross weekly earnings for full-time employees were £518, up 0.1% from £517 in 2013, the smallest annual growth since 1997, the first year for which data are available.
- Adjusted for inflation, weekly earnings decreased by 1.6% compared to 2013.
- Median gross weekly earnings for full-time employees increased by 1.0% in the public sector, and by 0.7% in the private sector.

Although the official figures are encouraging, readers will be aware that since 1 October 2014, tribunals are obliged to order employers found to be in breach of equal pay law to carry out equal pay audits in certain circumstances.

Acas Age Audit tool designed to provide framework for workforce strategy

In its November Workplace Snippets series, Acas highlight that over 20 million Britons will be over 65 within 30 years and therefore employers would be foolish to ignore this fastest-growing section of the workforce, particularly when recruiting, training, promoting and trying to retain staff. Acas also point out that age is also a protected characteristic under the Equality Act 2010, meaning that it is generally unlawful to treat someone worse because of age in the workplace unless an employer can objectively justify it. Within this context, Acas, in partnership with the Age Research Centre at Coventry University, has developed an Age Audit tool. The online tool is free, and will help employers: (i) assess what their employees think about age issues in their workplace and the organisations' approaches and policies; (ii) help address any risks or issues that could potentially lead to future discrimination claims; and (iii) create a firm foundation for policies, practices and future direction. Using a traffic light colour-coding system, the tool enables users to highlight areas of greatest concern and prioritise any interventions that need to be made.

ICO successfully prosecutes pharmacist who unlawfully spied on family and colleagues' medical records

Harkanwarjit Dhanju, a pharmacist who worked for a Primary Care Trust has been prosecuted by the Information Commissioner's Office (ICO) under S.55 of the Data Protection Act, after unlawfully accessing the medical records of family members, work colleagues and local health professionals. Dhanju was fined £1000, ordered to pay a £100 victim surcharge and £608.30 prosecution costs. Dhanju did have responsibility for handling medication reviews for patients in local residential care homes with dementia and other mental health issues, but a manager uncovered that Dhanju was using his security pass to access unrelated medical records and the matter was reported to the ICO. The case serves as a reminder that within an organisation's data protection policy it should be clearly set out that unlawfully obtaining or accessing personal data is a criminal offence under S.55 of the Data Protection Act 1998 and this needs to be reinforced in staff handbooks and training.

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