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Zero hours Contracts (ZHC's)...again

The debate rumbles on with Vince Cable, the Business Secretary announcing that the Government will launch a consultation to address the abuse of zero-hour contracts. The Low Pay Commission (LPC) will also be asked to look at whether the national minimum wage (NMW) may be raised faster over the short to medium term.



The aim of the consultation is to gather information to understand how ZHC's are being used, to weed out abuse and ensure that employees are being treated fairly. BIS has highlighted 4 areas of concern:

>'Exclusivity clauses': those provisions that prevent individuals from working elsewhere even though under the terms of a ZHC they are not guaranteed a minimum number of hours and may need to supplement their income.

>Lack of transparency/understanding: it is apparent that people working under ZHC's are not aware that they may not be offered regular work.

>Uncertain earnings: due to the variable hours that a person may work under a ZHC it makes it more difficult for an individual to calculate their earnings which can in turn impact on their receipt of benefits.

>Power imbalance: individuals working under ZHC's have stated that they worry if they have to turn down hours offered under a ZHC that this may lead to hours not being offered in the future.

We will keep you updated with any relevant feedback following the consultation. It is recognised that ZHC's are more widely used than previously recognised. If, as an employer you engage staff under ZHC's bear in mind points 1-4 above and ensure that any employee or worker that you engage under any contract is treated fairly.



Is an employer paying for private medical treatment a step too far in terms of making reasonable adjustments?

In the case of **Croft Vets v Butcher** the EAT held that it was within the scope of reasonable adjustments to require an employer to fund private medical treatment.

The Claimant, off sick suffering with work related depression was referred to a consultant psychiatrist who in turn recommended that the Claimant see a clinical psychologist and attend six psychiatric sessions. The employer did not follow up either the referral to the clinical psychologist or facilitate the suggested 6 sessions. The employment tribunal held these omissions to be failures to make reasonable adjustments.

The employer appealed to the EAT on this point which was dismissed. The EAT upheld the finding of the employment tribunal that these adjustments were actually job related and the payments for these sessions were not simply for general private medical treatment but for a specific form of treatment to enable the Claimant to return to work.

The consultant psychiatrist had only predicted a 50% chance of success in the treatment, but it was believed that it would lead to an improvement in the Claimant's depression. Accordingly the EAT held that such adjustments were reasonable as they would mitigate the effect on the Claimant's condition that was preventing her from being at work.

Ill health is always a problem area for employers and where, on the whole, the most employment law related mistakes are made. If an employee is off sick and has received specialist medical treatment and that practitioner proposes a course of treatment that may enable an employee to return to work, you, as an employer, should consider this as a reasonable adjustment which may enable the employee's return to work.

Acas to amend Code of Practice re disciplinary & grievance procedures

Following an Employment Appeal Tribunal ruling in the case of **Toal and another v GB Oils Ltd [2013] IRLR 696** EAT Acas will be amending its Code of Practice on disciplinary and grievance procedures. The EAT ruling was on the choice of companion.

The statutory right for a worker to be accompanied at a disciplinary or grievance hearing applies if the worker 'reasonable requests' to be accompanied (section 10 of the Employment Relations Act 1999).

In the case cited above the employer had refused the request of two employees to be accompanied at a grievance meeting by a specific trade union official. The employer, at the EAT, argued that the word 'reasonably' applies to the choice of companion as well as the request to be accompanied. The EAT held that there was no requirement for an employee's choice of companion to be reasonable as long as said companion falls within one of the permitted categories (work colleague or trade union official).

As a result of the EAT's decision the Acas Code of Practice will be amended.

News and Updates

Scottish Judicial review on Employment Tribunal fees

You will recall we have provided regular updates on the judicial review application launched by Scottish law firm Fox & Partners which addresses the same issues as the review brought by UNISON. As a result the Court of Session has stayed Fox & Partners' judicial review proceedings and UNISON's court hearing will take place on 22nd and 23rd October 2013.



Financial Penalties for Unsuccessful Employers

As of April 2014 section 16 of the Enterprise and Regulatory reform Act 2013 (ERRA 2013) will come into force. This provision gives employment tribunals the power to order an employer who has unsuccessfully defended an employment tribunal claim against it to pay a financial of up to £5,000 to the Secretary of State where the case has 'aggravating features.'

Construction Workers Blacklist

It has been reported that eight large national construction companies are to compensate workers whose names were listed on a database that was used to stop them working. The companies have apologised for involvement with the company that compiled the database but have not admitted liability.

A number of individuals are pursuing legal action against the companies for their losses as a result of being blacklisted.

Neves Employment Workshops

As an employment department we believe the best way to advise clients is with a practical and plain talking approach.

Employment law is constantly evolving, changing and updating and it can be a struggle for employers to stay abreast of their obligations. Often managers and personnel have queries that they don't want to ask as they are embarrassed by gaps in their knowledge. The aim of our sessions is to answer any questions on a range of employment law related topics to assist our clients and manage their workplaces more effectively.

To find out more click [here](#)

We are currently offering recipients of our employment law bulletin **30 minutes free employment advice**. Email Elizabeth for details.

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