Choice of companion does not need to be reasonable

S.10(1) of the Employment Relations Act 1999 gives a worker the right to reasonably request to be accompanied at a disciplinary or grievance hearing. S.10(3) lists the categories of permitted companions, which includes a trade union official. In Toal and another v GB Oils Ltd, the employer refused a request from Toal and Hughes to be accompanied by Lean, a trade union official, at a grievance hearing. The employer refused the request for Lean, but did permit a work colleague and another trade union official to act as companions. A tribunal rejected Toal and Hughes' claims for failure to permit them to be accompanied by their chosen companion because they had waived their right to be accompanied by Lean when they accepted the other companions.

Toal and Hughes appealed arguing that it was not open to the tribunal to find that they had waived their right to be accompanied by Lean. The EAT agreed with them and in doing so, it rejected the employer's argument that the word "reasonably" applies to the choice of companion as well as the request to be accompanied. The employer based its argument on Para.36 of the Acas code of practice on disciplinary and grievance procedures which states that "it would not normally be reasonable for workers to insist on being accompanied by a companion whose presence would prejudice the hearing." But the EAT held that an Acas code of practice is not aid to the construction of a statute and could not be accepted, as there is no standard available to judge reasonableness. Therefore, there is no requirement for a request to be accompanied by a particular companion to be reasonable, provided the companion is within one of permitted categories, and clearly Lean was such a person.

Commencement Order introduces confidentiality of pre-termination negotiations

The Enterprise and Regulatory Reform Act 2013 (Commencement No. 2) Order 2013 (SI 1648/2013) has been published. The Order brings the following provisions of the Act into force from 29 July 2013: (i) S.14 - confidentiality of negotiations before termination of employment, which provides that, other than in specified circumstances, an offer to terminate the employment relationship on agreed terms is not admissible as evidence in any subsequent unfair dismissal case; and (ii) S.23 which renames "compromise agreements", "compromise contracts" and "compromises" as "settlement agreements" in all relevant pieces of employment legislation. Acas has produced a Code of Practice on Settlement Agreements (published initially to accompany the Acas response to consultation), which sets out the broad principles covering the use of settlement agreements to accompany the legislation on pre-termination negotiations.

Consultation on illegal working penalty scheme simplification

The Home Office has started a consultation seeking views on proposals to strengthen and simplify the current civil penalty scheme to prevent illegal migrant working. Employers already have a responsibility to check that their employees have the right to work in the UK, and since 2008 this has been underpinned by a civil penalty scheme. The Government proposes to further refine these requirements to get tougher on employers who continue to exploit illegal migrant workers, and increase the sanction to reflect the harm they cause. In parallel, and mindful of burdens on legitimate business, the Government is proposing a number of measures to significantly reduce the administrative costs of complying with the requirements to make checks. The proposals include increasing the size of the maximum civil penalty from £10,000 to £20,000 for each illegal worker and reducing the range of documents that can evidence the eligibility to work for checking purposes.

Changes to interest on tribunal awards

On 8 July, the Employment Tribunals (Interest on Awards in Discrimination Cases)(Amendment) Regulations 2013 (SI 1669/2013) and the Employment Tribunals (Interest) Order (Amendment) Order 2013 (SI 1671/2013) were laid before Parliament. The legislation:

- Increases the rate of interest payable on a claimant's losses up to judgment, as part of compensation for discrimination in England and Wales, from 0.5% to 8%. This brings England and Wales into line with Scotland where the interest rate has been 8% for the last 20 years.

- Amends the Employment Tribunals (Interest) Order 1990 so that interest on a tribunal award is payable from the day after the relevant decision day, unless the full amount is paid within 14 days after the decision day. Interest currently only accrues on an unpaid tribunal award after 42 days.

Under the transitional provisions for both pieces of legislation the changes apply in relation to a claim which is presented to an Employment Tribunal Office on or after 29 July 2013.

ONS figures show 25% of population have no religion

The Office for National Statistics (ONS) has recently published a report giving a detailed breakdown of findings about religion from the 2011 census. The report, Full story: What does the Census tell us about religion in 2011?, highlights that in the 2011 Census, Christianity was the largest religious group in England and Wales with 33.2 million people (59%). The second largest religious group were Muslims, with 2.7 million people (5%). The proportion of people who reported that they did not have a religion reached 14.1 million, a quarter of the population (25%). In 2011, there were 4.1 million fewer people reporting as Christian (from 72% to 59%), 6.4 million more people reporting no religion (from 15% to 25%) and 1.2 million more people reporting as Muslim (from 3% to 5%).