

The EAT have ruled that a whistleblower did make a disclosure in the public interest because even though the alleged manipulation of financial figures affected him personally, it also affected over 100 colleagues. A tribunal has made a costs award in favour of a successful group of claimants whose fees had been paid by their union, as the fees were 'loaned' and were repayable if the claim succeeded. The TUC has published a guide, 'Epilepsy in the workplace', designed to aid trade union representatives and members in understanding and dealing with epilepsy within the working environment. A survey of 1000 employers has revealed that 45% were less inclined to recruit at interview stage if the applicant was obese and 26% were not aware of the laws around employing obese workers.

EAT sets a low threshold for the public interest test in whistleblowing claims

On 25 June 2013, S.43B(1) of the Employment Rights Act 1996 was amended so that protection for whistleblowing would only apply where a qualifying disclosure was made "in the public interest". The addition of the words "in the public interest" was designed to reverse the effect of the EAT's decision in *Parkins v Sodexho Ltd* [2002] IRLR 109, that breaches of a worker's own contract of employment could qualify for whistleblower protection.

In [Chesteron Global Ltd v Nurmohamed](#), the EAT had to decide whether Mr Nurmohamed (N), who had been dismissed after disclosing information about the alleged manipulation of profit and loss figures, which were used to calculate the sales commission paid to over 100 managers, including him personally, and which he also alleged were being manipulated to the benefit of the shareholders, had made a disclosure which he reasonably believed was "in the public interest".

An employment tribunal found that N had been automatically unfairly dismissed on grounds that he had made a protected disclosure. The tribunal concluded that: (i) the disclosures were made in the belief of N at the time that it was in the interest of over 100 senior managers; (ii) that is a sufficient group of the public to amount to being a matter in the public interest; (iii) the belief was reasonable, because the over-inflation of the costs set against the office budgets would have decreased profits and potentially reduced bonuses for all the managers; and (iv) while N was principally concerned about his own situation, he did have his colleagues in mind.

The EAT upheld the tribunal's decision, rejecting the employer's appeal that the disclosure was not in the public interest. N's belief that the disclosure was in the public interest was objectively reasonable. In addition, while N was primarily concerned with his own position, the tribunal had found that he did have the other managers in mind, which meant that a section of the public would be affected and that the public interest test was satisfied. This decision shows that where a disclosure does affect the whistleblower personally, but also impacts on a number of others, then having a personal interest does not automatically preclude there being a public interest overall. Within this context the EAT have set the 'public interest' test at a relatively low level.

Fee costs can be awarded if claimants reimburse union for fees paid on their behalf

Readers will recall that earlier this year we reported the EAT's decision in *Goldwater and others v Sellafeld Ltd*, where the EAT interpreted the reference to the recovery of "any [tribunal] fee paid by the appellant", in the EAT rules, as preventing a costs order being made where an appeal has succeeded, but the appellant's fee had been paid on their behalf by a trade union. In this case, a provision in the GMB rulebook indicated that members will not, provided they follow the rules, have to pay any legal costs. HH Judge Shanks accepted that this provision must negate any implied obligation there may have been on members to indemnify the union in respect of the fees paid on their behalf and it was clear that the Appellants had in fact paid nothing to the GMB by way of reimbursement.

In *Legge and others v Prestige Homecare Ltd (in administration) and others* ET/2401324/14, however, an employment tribunal has made a costs award in favour of a group of claimants whose fees had been paid by their union. The tribunal held that the claimants' union was acting as their agent in making the payments, and that the fees were, therefore, "paid by" the claimants for the purposes of making a costs order under the ET rules. In this case, the claimants were represented in the tribunal by solicitors appointed by their trade union, UNISON. When their claim form was submitted, the claimants' solicitor paid the £1,000 issue fee. The claimants each entered into a loan agreement with UNISON to advance a sum to them equal to the tribunal fees. The money advanced under the agreement was repayable by each claimant in the event that their claim, or part of it, succeeded in the tribunal.

The facts in this tribunal case can be distinguished from *Goldwater*, i.e. in *Goldwater*, the EAT ruled that a no fee-costs award applies where the successful party has not paid, or is not liable to pay, any fee at all. The tribunal's decision in *Legge* means that a successful party may be able to recover the costs of fees where they have been paid by a union, on the condition that they will be repaid if the claim succeeds. However, the tribunal's decision is not binding.

TUC publishes new guide to epilepsy in the workplace

The TUC, in partnership with Epilepsy Action, has published '[Epilepsy in the workplace](#)' to aid trade union workplace representatives in supporting members with epilepsy. The guide was written for the TUC by Epilepsy Action and is based on the social model of disability, which means epilepsy is not seen as a barrier to work. However, there may be external barriers to accessing work in the form of ignorance, prejudice and failure by employers to make workplace adaptations. The guide educates trade union members about epilepsy, and provides guidance on reasonable workplace adjustments and making workplaces epilepsy-friendly. While designed for union representatives and union members, the guide is a valuable source of information for managers and HR specialists.

Study reveals prejudice against obese people by employers during recruitment

[Personnel Today](#) have featured the results of a survey by Crossland Employment Solicitors who polled people with hiring responsibilities at 1,000 employers looking at recruitment attitudes towards obese employees. The survey follows the recent ECJ ruling that obesity in itself is not a disability but an obese worker may come within the definition of a disabled

person if long-term impairments arising as a consequence of obesity prevent the worker from doing their job on an equal basis with others. 45% of employers admitted they were less inclined to recruit at interview stage if the applicant was obese, expressing views such as "Obese workers are unable to play a full role in the business". As the article points out the lack of understanding about the law could result in a problem if an obese person tells a potential employer about their impairments at interview, the company does not employ them and the applicant claims disability discrimination because it was their obesity that caused the rejection.

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.