

In This Edition

The EAT confirm that having Type 2 diabetes in itself cannot automatically mean that a person is disabled; an employee will have to show evidence of a long-term substantial adverse effect on day-to-day activities

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The Ministry of Justice have published tribunal statistics for October to December 2014 which show that there were 4,386 single claims in October 2014 to December 2014, 12% down on the same period in 2013.

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The Government has accepted all the LPC's recommendations for increases to the national minimum wage hourly rates, except for the apprentice hourly rate which will be £3.30 and not £2.80 as recommended.

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An Acas study has revealed that amongst callers to the Acas

helpline, agency workers were often unaware of their employment rights and afraid of raising workplace concerns due to fears over job security.

Type 2 diabetes does not inevitably amount to a disability

In [Metroline Travel v Stoute](#), Mr Stoute (S) has Type 2 diabetes. The preliminary issue was whether S was disabled within the meaning of the Equality Act 2010 (EA 2010). An employment tribunal decided that S was disabled. It referred to a medical report stating that there were two periods when S was not taking medication which reduces blood sugar levels and S followed a diabetic diet by avoiding, for example, sugary drinks.

In reaching its decision, the tribunal referred to the statutory document, '[Guidance on matters to be taken into account in determining questions relating to the definition of disability](#)' which at paragraph B12 provides that an impairment the subject of treatment or correction was to be treated as having a substantial adverse effect if but for the treatment or correction the impairment was likely to have that effect. The tribunal also agreed with S's solicitor that a medicated diabetic would regularly be treated as disabled under the EA 2010 even if there had been no episode showing a substantial

interference with normal day-to-day activities. The employer appealed.

In a preliminary review of the case before sending it to a full hearing, another EAT Judge suggested that there was a real prospect of showing that the tribunal had decided that anyone with Type 2 diabetes automatically meets the statutory definition of disability.

HH Judge Serota, hearing the appeal, upheld the employer's appeal. Judge Serota, a Type 2 diabetic himself, saw it difficult to see how a perfectly normal abstention from sugary drinks could be regarded as a medical treatment and there was nothing to suggest from the evidence that there has been any substantial interference with normal day-to-day activities. In addition, the tribunal had failed to take account of paragraph B7 of the statutory Guidance, which refers to paragraph B12, and which states, "*In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability.*"

The judgment confirms that having Type 2 diabetes in itself cannot automatically mean that a person is disabled. Having established that there is an impairment an employee will have to show evidence of a long-term substantial adverse effect on day-to-day activities. If there is any

day-to-day activities. If there is any uncertainty as to whether the definition of disability has been met, employers should always refer to the statutory Guidance.

Acas publishes new suite of practical tools on shared parental leave

Acas has published a new series of official forms and sample letters to help those who are interested in taking shared parental leave, which allows couples to share maternity or adoption leave and pay from 5 April 2015, but who are unsure on how to do it. The new suite of free tools shows employees how to prove that they are eligible and entitled to shared parental leave alongside template letters on how to officially book this leave. The forms and template letters cover surrogate parents, adopters and mothers who are entitled to maternity or adoption leave. These tools and Acas' full guidance *Shared Parental Leave: A good practice guide for employers and employees*, are available at [Shared parental leave and pay](#).

MoJ publish tribunal statistics for October to December 2014

The Ministry of Justice (MoJ) have published a number of [documents](#) setting out tribunal statistics for October to December 2014 and fee remission figures for the 12 months ending 30 September 2014. Key

ending 30 September 2014. Key findings, which show an ever-continuing decline in tribunal claims since fees were introduced, are as follows:

- The total number of single employment tribunal claims received in October to December 2014 was 4,386, which is 12% fewer than in the same period of 2013.
- The number of multiple claims in October to December 2014 was 14,557, which related to 622 multiple claim cases, compared to 5,873 multiple claims in the same period in 2013 and 485 multiple claim cases.
- For issue fees, in the 12 months ending 30 September 2014, the full issue fee was paid in 16,816 cases and either a full or partial issue fee remission was granted in 3,656 cases.
- For hearing fees, 11,905 remissions were requested; 4,175 had the full hearing fee paid; 1,625 were awarded either a full or partial remission; and there is no record of payment/remission for the remaining 6,105 requests.

Government's responses to the LPC recommendations on NMW hourly rates

The Government has published its [response](#) to the Low Pay Commission (LPC) recommendations. The Government has accepted that the following hourly rates for the national minimum wage (NMW) should increase in October 2015: (i) from £6.50 to £6.70 for adults; (ii) from £5.13 to £5.30 for the development rate that covers workers aged 18 to 20 years old; and (iii) from £3.79 to £3.87 for 16 to 17 year olds. The Government, however, has concluded that the apprentice rate should be £3.30 and not £2.80 as recommended. The new rate set by the Government is an increase of 57p an hour (21%) and is the largest ever increase in the NMW for apprentices, which will halve the gap with the 16-17 year olds. While not stated in the response, presumably this decision accords with the Government's policy of promoting apprenticeships.

[Acas study reveals low awareness of rights & fear of raising concerns by agency workers](#)

An Acas study has revealed that amongst callers to the Acas helpline, agency workers were often unaware of their employment rights and afraid of raising workplace concerns due to fears over job security. The Acas paper '[Three sides to every story: the impact of the Agency Worker Regulations](#)' looked at recent research around agency workers as well as employers and employees

that called the Acas helpline about agency work. Acas' analysis revealed that agency workers were often unaware of their rights particularly around holiday pay, notice periods and the 12 week qualifying period when an agency worker doing the same work is entitled to have the same basic terms and conditions of employment as if they had been employed directly by the hirer. In addition they were often afraid of asserting their statutory rights due to believing that there's an imbalance of power in the employment relationship.

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.

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