

EMPLOYMENT LAW NEWSLETTER

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DO YOU HAVE TO PAY REDUNDANCY PAY?

If you are reorganising your workforce, remember that your redundant employees are not entitled to a redundancy payment if they unreasonably refuse an offer of suitable alternative employment. Unfortunately, it is not always easy to work out whether the offer is suitable *and* whether the rejection was unreasonable.

In a December 2011 case, a community nurse, Mrs. Readman, was offered a job in a hospital when her role became redundant. This was found to be an offer of suitable alternative employment. However, Mrs. Readman had no desire to return to hospital nursing. The Employment Appeal Tribunal concluded that this "desire" was a sound and justifiable reason for turning down the offer and that, as a consequence, there had been no unreasonable refusal of the offer of suitable alternative employment.

It can be very difficult to judge whether the offer you make is a suitable offer for that particular employee and whether their refusal to take up the offer disentitles them to redundancy pay. For advice on whether you have to pay redundancy pay, call 01732 424000.

DRISCOLL SOLICITORS

26 Kings Hill Avenue, Kings Hill, West Malling,
Maidstone, Kent, ME19 4AE

Tel no. 01732 424149

Fax: 01732 424001

Web: www.driscollsolicitors.com

Email: driscollsolicitors@hotmail.co.uk

ARE YOUR STAFF SELF-EMPLOYED OR EMPLOYEES?

The distinction is important because certain employment rights only apply if they are employees. The tax position is also different for employees.

The courts have approached the issue in various ways. In a case involving the employment (and tax) status of Weight Watchers' Leaders (Oct 2011), a tax tribunal decided that its Leaders were employees as they were never entirely free of any work-related obligation. For example, even if they could not take a meeting, they were still obliged to show a good reason for their absence. In addition, they were also required to find a suitably qualified replacement or request assistance from WW to run the meeting. The court also decided that they were subject to WW's "control" and therefore employees as WW had the ultimate say over the arrangements for (and the content of) the WW meetings.

If you need advice as to whether your staff are self-employed or employees, please contact us at driscollsolicitors@hotmail.co.uk.

CHANGES TO QUALIFYING PERIOD FOR UNFAIR

DISMISSAL

In order to claim ordinary unfair dismissal, you have to be an employee and you have to have had a year's continuous service. New Regulations will shortly be published which will increase the qualifying period to two years. This will, however, only apply to those starting a new job on or after 6 April 2012.

COMPENSATION LIMIT

From 1st February 2012, the maximum compensatory award for unfair dismissal goes up from £68,400 to £72,300. A week's pay (for basic award and redundancy pay purposes) goes up from £400 to £430.

HAVE YOU LOST A CONTRACT TO A NEW SUPPLIER?

Do you have a relationship with a client who hires your company's services? Do you supply goods and services to a third party? If the contract is then awarded to another supplier or taken in-house, this is known as a 'Service Provision Change' and comes under the Transfer of Undertakings ("TUPE") legislation. TUPE can have profound implications for the old and new suppliers. If TUPE applies, the new supplier might inherit the old supplier's employees. There are also obligations to inform and consult with trades unions and /or affected employees.

The Employment Appeal Tribunal handed down a judgment in December 2011 which reinforced the BIS guidance on what constitutes a 'Service Provision Change' such as to activate TUPE. It found that simply supplying finished goods to a third party does *not* constitute an activity for the purposes of TUPE. If your employees are not engaged in the activity for the client, TUPE does not apply if the contract is transferred.

SERVICES FOR YOU

We can come to your offices or factory and sit round the table with your line managers and staff to offer seminars and guidance on the following:

- ❖ TUPE
- ❖ Harassment
- ❖ Equal Opportunities
- ❖ Managing stress at work
- ❖ Age discrimination and retirement
- ❖ Recruitment
- ❖ Handling disciplinary and grievance hearings

Call 01732 424149 now to make an appointment and discuss your business's needs.

DO YOU HAVE THE RIGHT TO SUSPEND AN EMPLOYEE SUSPECTED OF GROSS MISCONDUCT?

The Court of Appeal has handed down a reminder that employers do not have the automatic right to suspend employees. In this case, two nurses were suspended following their 'restraint' of an elderly patient with dementia. Their suspension lasted six months. The judge said that *"even where there is evidence supporting an investigation, that does not mean that suspension is automatically justified. It should not be a knee jerk reaction, and it will be a breach of the duty of trust and confidence towards the employee if it is"*. If you are considering suspending an employee, you should not only check your contracts and policies to see whether you have the right, but also consider the employee's past service when carrying out the risk assessment as to whether suspension is appropriate in the circumstances.

Driscoll Solicitors specialise solely in employment law, so you can be confident that you are dealing with experts.

We can provide you with legal advice on all aspects of employment law. You might be puzzling about a redundancy selection process, grappling with TUPE or you might simply be worried about ending up in a tribunal. We can help you through all these processes, providing you with up to date advice that is relevant to your business's needs.

We can offer you a free initial telephone consultation. Call us now on 01732 424149 or email us at: driscollsolicitors@hotmail.co.uk for a call back at a time convenient to you.

The logo for Driscoll Solicitors features the company name in a large, white, serif font against a dark blue background. The word 'DRISCOLL' is positioned above the word 'SOLICITORS'.

DISCLAIMER

Please note that this newsletter is no substitute for formal legal advice and assistance. It is intended purely for general information and is drafted upon our understanding of the legal situation at the above date. We cannot accept responsibility for any loss, act or omission arising in reliance upon this

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