

ACAS Code of Practice

The final draft of the ACAS Code of Practice on Discipline and Grievance has now been published in preparation for the repeal of the statutory dismissal and discipline procedures in April 2009.

Employers should ensure that they are familiar with the revised Code and accompanying guidance which can be accessed at:
<http://www.acas.org.uk/index.aspx?articleid=2124>

Working Time Opt-out

In the 1998, when the limit on the working week (average 48 hours) was first imposed by the Working Time Directive, the UK secured an exemption or "opt-out" from this obligation. Since that time, the UK government has fought hard in Europe to maintain this exemption.

Use of the Opt-out

Initially, the UK was the only Member State to introduce a general right to opt-out of the 48 hour week across all industry sectors. The rest of Europe chose to limit the right to opt-out to specific sectors.

Opt-out Review

In 2004, following a European Commission Review, it was felt that the use of the opt-out was being abused and should be restricted. Some 4 years' later, it appeared that an agreement had been reached. In June 2008, the EU Employment Council reached agreement on revising the opt-out rules and agreed to retain it, but subject to stricter conditions. However, the European Parliament then rejected the proposal and voted instead to scrap the opt-out altogether within 3 years. Until the Council and the Parliament can agree on a position, UK employers can continue to benefit from the opt-out exemption. However, they should be aware that the scrapping of the opt-out, or at the very least some significant limitations of this right, are likely to occur in the next few years.

Thursfields Debt Recovery Services

In the current economic climate, all late payers are proving to be a headache with bad debts seriously affecting cash flow! With our professional expertise, we can help to recover your money and ease your problems. We offer a cost effective service with fixed rates (not charges by the hour) available upon application. For details, contact Gordon Smith on 01562 512447 or email: GSmith@Thursfields.co.uk

On the Horizon....

Compensation limits

Compensation limits will rise in February 2009:

- a "week's pay" cap rises from £330 to £350;
- maximum statutory redundancy payment increases from £9,900 to £10,500;
- maximum compensatory award for unfair dismissal rises from £63,000 to £66,200.

April Rates increase

From 6 April 2009, the following rates are expected to increase as follows:-

SMP

Flat rate SMP will increase from £117.18 to £123.06 per week.

SSP

Weekly rate of SSP will increase from £75.40 to £79.15.

Long Term Sickness and Holiday Pay

The European Court of Justice has finally delivered its long-awaited judgment in the case of *Stringer v HMRC*. This will be covered in a later newsletter but for those eager to read the judgment, see link below:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006J0350:EN:HTML>

Selecting for Redundancy

In the current economic climate, making redundancies might seem inevitable. Whilst redundancy can be a genuine reason for terminating employment, it is important for the employer to ensure that a fair procedure is followed in effecting that dismissal.

A failure to follow the correct procedures can lead to claims of unfair dismissal. For a basic guide to the relevant steps in a redundancy procedure, please refer to our September 2008 newsletter (available via the website). A recent case focused on the scoring process involved in selecting individuals for redundancy and found that a subjective scoring system without prior consultation led to a finding of unfair dismissal.

Background

Ms Gregory worked as an administrator and ambulance driver for E-Zec from January 2005 until her dismissal on the grounds of redundancy in January 2007. In 2006, E-Zec agreed to a reduction in Gregory's working hours in order to allow her to care for her disabled child and subsequently allowed her to work term-time only. Gregory maintained that this arrangement, although agreed to by the Company, was a factor in her subsequent redundancy dismissal.

In 2006, E-zec faced a downturn in work and proposed to make 4 employees redundant out of a possible pool of 14. The selection process was spilt between two managers - the HR Manager, who scored the non work-related criteria by reference to personnel files (ie service, absence, sickness days, sickness occasions and discipline) and the Regional Manager who alone scored staff on issues relating to performance, commitment and attitudes, skill base and team working, based on his personal judgment. Gregory was amongst the 3 lowest scorers and she was subsequently made redundant. Gregory brought Tribunal complaints, amongst other things, for unfair dismissal by reason of redundancy.

Decision

The Tribunal noted that there was no initial consultation about the selection methods, chosen criteria or the marking process with either the employees or the union. The Tribunal also found that the selection process guidelines and in particular, the definitions for the criteria were wholly subjective and incapable of objective measurement. As staff had never received appraisals, key aspects of the criteria were left solely to the Regional Manager's personal judgment. The Tribunal concluded that in the absence of evidence as to how the scoring had been arrived at, it was impossible for the Tribunal to decide that the selection criteria had been fairly applied.

In addition, the Tribunal held that Gregory had not been consulted adequately during the redundancy process. For example, her first individual "consultation meeting" was found to be just a meeting to tell Gregory her scores with no actual consultation taking place. At her next consultation meeting, she was handed a letter informing her of her dismissal due to redundancy. Accordingly, the Tribunal upheld her complaint of unfair dismissal. The employer's appeal to the Employment Appeal Tribunal was rejected.

Comment

When undertaking a redundancy selection process, employers should ensure that they give sufficient thought and planning to the appropriate selection pool but also to their chosen selection criteria and ensure that those criteria are capable of objective measurement (as much as possible) and applied fairly.

E-zec Medical Transport Service Ltd v S A Gregory, EAT

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