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## Employment Law Update

While we wait, with bated breath, to see if the budget will be issued on time, there have been several anticipated key changes in employment law that will, apparently, prove less controversial than Government spending plans!

### **Bereavement Leave**

The Government has published new draft legislation to provide a statutory minimum level of paid leave for parents who suffer the loss of a child. This is proposed to be in force from 6th April 2020.

The legislation creates a right to two weeks' leave if a working parent loses a child under the age of 18 or suffers a stillbirth after 24 weeks of pregnancy. Leave can be taken either in a block of two weeks or in two separate blocks of one week.

Workers who have been employed for a continuous period of at least 26 weeks will be entitled to be paid at the statutory rate of £148.68 per week, or 90% of average weekly earnings, whichever is the lower figure. Workers who have not been employed for a continuous period of at least 26 weeks will be entitled to two weeks leave but this will be unpaid.

This is still draft legislation at this stage but appears to be uncontroversial within Government and therefore likely to come into force.

You may wish to review your existing policies in light of this change.

### **Disability Discrimination – Tesco Stores Limited v Tennant**

The Employment Appeals Tribunal has held that, when bringing a disability discrimination claim, a Claimant must show that their condition had a 'long-term effect' **at the time of the alleged act of discrimination**.

Only a person who meets the Equality Act 2010 (EqA) definition of disability has the protected characteristic of disability. Disability is defined as any **physical or mental impairment** which has a **substantial** and **long-term adverse effect** on a **person's ability to carry out normal day-to-day activities**.

If a Claimant can establish that they have a physical or mental impairment they often have little difficulty in establishing that it had a substantial adverse effect on their ability to carry out day-to-day activities. In order to be long-term, the condition must have lasted at least 12 months, or the total period for which it lasts, from the time of the first onset, must be likely to be at least 12 months, or it must be likely to last for the rest of the life of the person affected. The word 'likely' has been interpreted as meaning that it 'could well happen'.

This case has confirmed that when relying on an impairment having lasted for at least 12 months, this must be the position at the time of the alleged acts of discrimination **or there must be a clear indication that the condition will likely last for at least 12 months**.

## Draft Code of Practice on workplace harassment

On 14 January 2020, the Equality and Human Rights Commission (“EHRC”) issued Technical Guidance on sexual harassment and harassment at work. They have since described the Guidance as the draft version of a statutory code of practice. When it becomes statutory code tribunals will be obligated to take it into account where relevant.

There are seven steps that the EHRC advises employers to take to make sure they are preventing and responding to sexual harassment at work:

- ✓ Develop an effective anti-harassment policy
- ✓ Engage with staff regularly
- ✓ Assess and mitigate risks in the workplace
- ✓ Consider using a reporting system that allows workers to report issues anonymously
- ✓ Train staff on sexual harassment
- ✓ Act immediately on receipt of a harassment complaint
- ✓ Treat third party harassment as seriously as other workplace harassment

### ...and finally...

The BBC presenter, Samira Ahmed, has been successful in bringing an equal pay claim against the BBC. The claim was on the grounds that she was paid £440 per episode of Newswatch, while the male presenter, Jeremy Vine, was paid £3,000 per episode of Points of View.

The Employment Tribunal found that Samira’s work was “like work”, or work of equal value to Jeremy’s and rejected the BBC’s argument that the presenters’ roles were not comparable. Further, the Employment Tribunal stated that “the BBC found itself in difficulties in this case because it did not (and, to an extent, still does not) have a transparent and consistent process for evaluating and determining pay for its on-air talent.”

This case will likely increase the awareness of these types of claim further. It underlines the benefit of having adequate and objective processes in place to determine pay rates.

**Compliance with the Guidance should be considered even before it is made statutory code. A link to the Guidance can be found [here](#).**

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