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**Acas Launches New Stress Management Guidance for Employers**

The Advisory, Conciliation and Arbitration Service (Acas) has issued new advice for employers on managing stress, which includes tips on how to spot the signs of stress and how to create a working environment where staff can openly talk about it.

The new guidance comes after a YouGov survey commissioned by Acas revealed that a third of British workers (33 per cent) believe their organisation is not effective at managing work-related stress.

Acas advice for employers on managing stress at work includes:

* Look out for any signs of stress among staff;
* Be approachable and available, and have informal chats with staff who are feeling stressed;
* Respect confidentiality and be sensitive and supportive when talking to staff about work-related stress; and
* Communicate any internal and external help available to staff, such as financial advice if the cost of living is a cause of stress.

Further information can be found at https://www.acas.org.uk/acas-launches-new-advice-on-managing-stress-at-work-as-1-in-3-workers-feel-that-their-organisation

**Brexit Cost Live-in Domestic Workers the Right to the National Minimum Wage**

The UK's departure from the EU has had profound effects on aspects of employment law. As an Employment Appeal Tribunal (EAT) ruling made plain, one of them was to remove the legal entitlement of nannies, housekeepers and other live-in domestic workers to receive the National Minimum Wage (NMW) (Thukalil and Another v Puthenveettil and Another).

One such worker who was engaged to work in a couple's home succeeded in an Employment Tribunal (ET) claim that she was entitled to be paid the NMW. That was on the basis that the vast majority of live-in domestic workers are women and the failure to pay her the NMW thus amounted to indirect sex discrimination. The ET reached its decision during the transition period that preceded the UK's final exit from the EU.

The National Minimum Wage Regulations 1999 and 2015 exclude domestic workers engaged in family homes from the right to receive the NMW. The ET disapplied that exclusion, however, on the basis that it was indirectly discriminatory and conflicted with Article 157 of the Treaty on the Functioning of the European Union, which enshrines the right of men and women to be paid equally.

In rejecting the couple's challenge to that ruling, the EAT saw no reason to disagree with the ET's conclusion. However, it noted that, since Brexit took full effect on 31 December 2020, tribunals have had no power to disapply domestic legislation on the ground that it is incompatible with directly effective EU law rights. The dismissal of the appeal, therefore, did not mean that a domestic worker in the same position would now be entitled to the NMW.

We can advise you on all aspects of employment law. Contact **<<CONTACT DETAILS>>** for expert guidance.

**Chair-Renting Hairdresser Remained an Employee – Guideline ET Ruling**

Many hairdressers rent chairs from salons, paying a percentage of their takings to salon owners. However, as an Employment Tribunal (ET) ruling made plain, their apparent self-employed status is in many cases illusory (Matthews v Razors Edge Group Ltd).

The case concerned a stylist who was employed at a salon for a decade before she purportedly made the transition to self-employed status. She was eager to be paid on a self-employed basis, actively pursuing the change in the belief that she would be better off by £600 a month. She thereafter worked on a chair-rental basis, a commonplace arrangement in the hairdressing industry.

Following her departure from the salon, she launched ET proceedings against its owner, alleging, amongst other things, unfair dismissal and various forms of unlawful discrimination. In order to pursue her claims further, however, she first had to establish that she was an employee. The ET addressed the question of her status as a preliminary issue.

Following her apparent shift to self-employment, she was issued with a P45 and ceased to be a member of the owner's auto-enrolment pension scheme. She was no longer entitled to holiday or sick leave. The ET nevertheless concluded that she had, throughout her time at the salon, remained an employee within the meaning of Section 230(1) of the Employment Rights Act 1996.

The ET noted that, following the purported transition, nothing changed save for the manner in which she was paid. To all intents and purposes, she remained an integral part of the salon team and there was nothing that would have enabled colleagues or her regular clients to distinguish her from other members of staff.

She had no realistic right to substitute another hairdresser to perform her work, she continued to be bound by the salon's dress code, and the hours that she was required to work remained as before. She had to seek her manager's permission before leaving work early or taking holiday leave.

There was no change in the mutuality of obligation between her and the owner and the level of control that the latter exercised over how she went about her work also remained the same. All her takings went through the owner's till and she was neither an independent contractor nor in business on her own account.

Contact **<<CONTACT DETAILS>>** for individual advice on unfair dismissal claims.

**Employment Judge's Interventions Gave Rise to Apparent Bias – EAT Ruling**

Judges are entitled to robustly manage the cases that come before them, but what they cannot do is give even an impression that they are taking sides. In a case on point, an employment judge's interventions during a hotly contested hearing were found to have crossed the line into apparent bias (Rolec (Electrical and Mechanical Services) Ltd v Georgiou).

Following a hearing, which was held via video link during the COVID-19 pandemic, the employment judge upheld an office administrator's complaint of constructive unfair dismissal. The employer challenged his decision before the Employment Appeal Tribunal (EAT), asserting that his interventions indicated that he had pre-determined important issues in the case.

Ruling on the matter, the EAT rejected most of the employer's complaints. The employment judge was anxious to ensure that the claimant, who was acting in person, was not disadvantaged by her lack of legal representation. Most of his interventions fell into the category of legitimate case management.

In allowing the appeal, however, the EAT found that some of his remarks suggested that he had made up his mind on certain points before hearing full evidence. He had, amongst other things, questioned the employment law experience of the employer's representative in an uncalled-for and pejorative manner and had expressed a preliminary view that the employer's case on one issue was hopeless.

Adopting the neutral position of an informed and impartial observer, the EAT found that certain of the employment judge's interventions gave rise to an appearance of bias. On at least three occasions during the hearing, he gave the appearance of having taken a side. The EAT directed a fresh hearing of the case before a differently constituted Employment Tribunal.

It is vital to have expert legal advice when entering into Employment Tribunal proceedings. Contact **<<CONTACT DETAILS>>** for guidance.

**HSE Issues Refreshed Guidance on Violence and Aggression at Work**

The Health and Safety Executive (HSE) has updated its guidance on violence and aggression in the workplace, to help employers better protect their workers.

The guidance has been updated to:

* simplify the navigation to help you easily find the information you need;
* remove outdated content and replace it with up-to-date practical guidance;
* remind employers that the HSE's definition of violence includes aggression, such as verbal abuse or threats – this can be face to face, online or over the phone.

Help is included regarding violence prevention and how to support workers after a violent incident. It also guides employers to relevant legislation.

The guidance can be found at https://www.hse.gov.uk/violence/employer/the-law.htm

**National Minimum Wages Rates in Force for 2023**

The National Minimum Wage (Amendment) Regulations 2023 came into force on 1 April and provided for the following changes to the National Living Wage (NLW) and the National Minimum Wage (NMW) rates:

* The NLW, which applies to those aged 23 and over, has increased from £9.50 to £10.42 per hour;
* The NMW for 21- and 22-year-olds has increased from £9.18 to £10.18 per hour;
* The NMW for 18- to 20-year-olds has increased from £6.83 to £7.49 per hour;
* The NMW for 16- and 17-year-olds has increased from £4.81 to £5.28 per hour; and
* The apprentice rate of the NMW, which applies to apprentices aged under 19 or those aged 19 or over and in the first year of their apprenticeship, has increased from £4.81 to £5.28 per hour.

The accommodation offset will increase from £8.70 to £9.10 per day for each day during the pay period that accommodation is provided.

**Redundant Automotive Industry Worker Succeeds in Unfair Dismissal Claim**

A redundancy process may be genuine and necessary, yet procedurally unfair. An Employment Tribunal (ET) made that point in the case of an automotive industry worker who would have kept his job had a selection criterion not been carelessly and mistakenly applied (Downey v Resource Management Solutions (North East) Ltd).

Amidst a round of redundancies necessitated by the COVID-19 pandemic, the vehicle handling operative was placed in a pool of eight employees, five of whom would lose their jobs. Against his employer’s selection criteria, he was assessed to have scored fifth highest. Following his dismissal, he launched ET proceedings.

The ET noted that there was a genuine redundancy situation. Both the selection of the pool, based on length of service, and the criteria applied to selecting the five who would lose their jobs were fair and reasonable. Upholding the man’s unfair dismissal complaint, however, the ET found that the scoring system employed was obviously unfair and likely to lead to a perverse outcome.

The system – which gave particular weight to engagement in training processes and leadership roles – was bound to unfairly skew the final result. It had highly unusual elements that would seem peculiar to an impartial observer. Giving an example, the ET noted that an employee with a poor disciplinary record would have kept his job in preference to one with an exemplary record merely because the former had completed an additional simple training session.

It was more likely than not that one of those who kept their jobs had benefited from some form of favouritism, whether conscious or unconscious. But for the mistaken and careless application of a criterion relating to absences from work, the man would in any event have scored in third place and been safe from redundancy. The unfairness to him was not cured by a subsequent appeal process. If not agreed, the amount of his compensation would be assessed at a further hearing.

The manner in which the redundancy process is conducted is important and irregularities will be easily discovered by Employment Tribunals. Contact us for advice on the fair and proper course of action.

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