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TUC Union Reps Connect

Employment Law Update

6 October 2022

Introduction

- The post Covid workplace
- Wither the Employment Bill...
- Focus on key cases

- **The Personal Protective Equipment at Work (Amendment) Regulations 2022** - in force 1 April 2022
- **Trade Union (Levy Payable to the Certification Officer) Regulations 2022 and the Trade Union (Power of the Certification Officer to Impose Financial Penalties) Regulations 2022** – in force 1 April 2022
- **The Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) (No 2) Regulations 2022** – in force 1 July 2022

- **The Liability of Trade Unions in Proceedings in Tort (Increase of Limits on Damages) Order 2022, SI 2022/699** - in force 21 July 2022
- **The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022** in force 21 July 2022

Compensatory payments

- The rates for a statutory week's pay for calculating statutory redundancy pay and a basic award in a claim for unfair dismissal £571 (£544)
- The minimum basic award in cases where a dismissal is unfair by virtue of health and safety, employee representative, trade union, or occupational pension trustee reasons increased to £6,959 (£6,634)
- The limit on compensation for unfair dismissal is the lower of 52 weeks pay or £93,878 (£89,493)

Statutory Benefits

- Statutory Maternity, Paternity, Adoption pay is increased to £156.66 (£151.97)
- SSP is to increased to £99.35 (£96.35) – Max 28 week period

National Minimum Wage – 1 April 2022

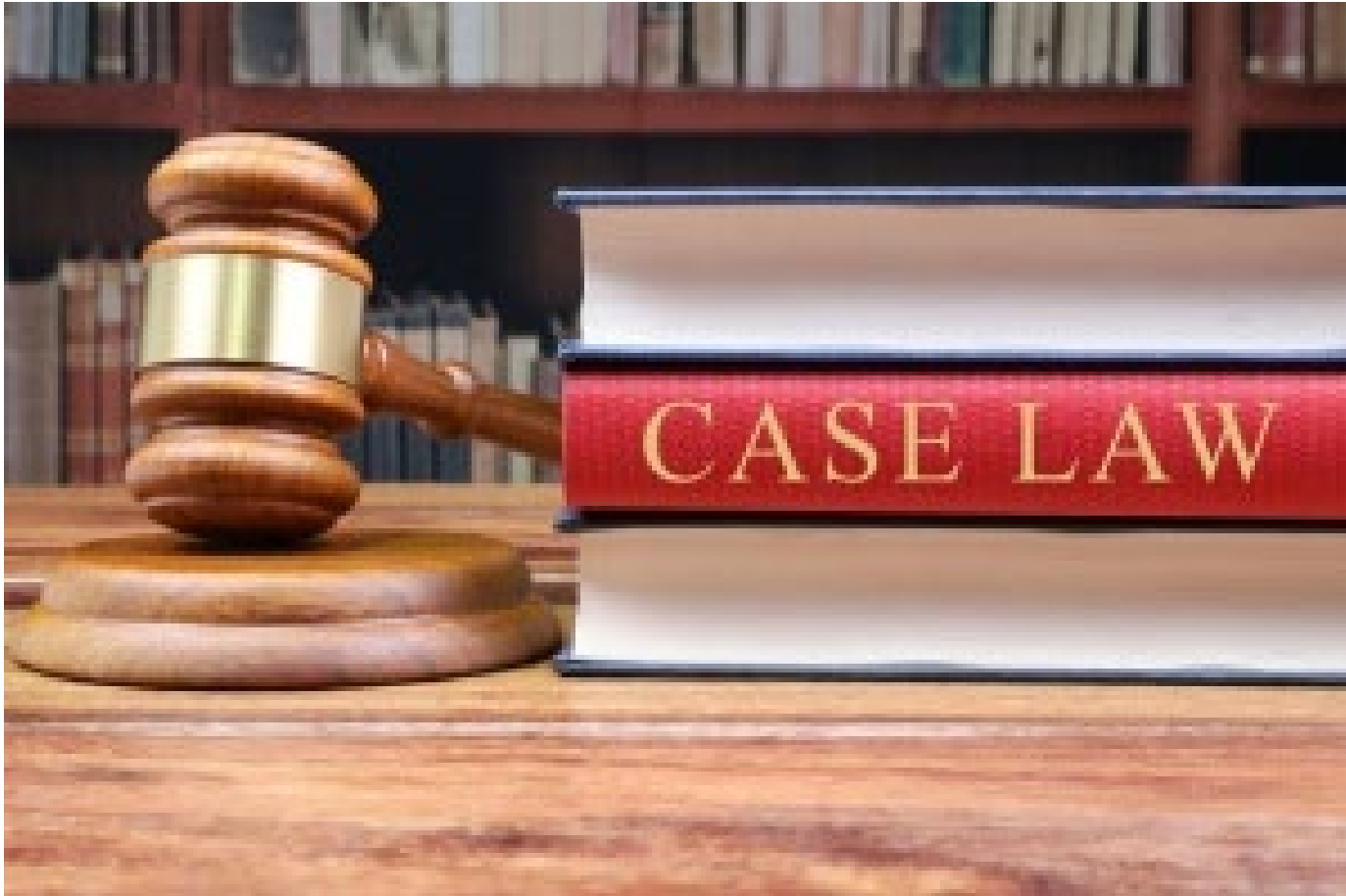
The NMW wage rates from 1 April 2022 are as follows;

- Age 23 or over increased to £9.50 (£8.91).
- Age 21 to 22: £9.18 (£8.36).
- Age 18 to 20: £6.83 (£6.56).
- Age 16 to 17: £4.81 (£4.62).
- Apprentice rate: £4.81 (£4.30).
- Accommodation offset £8.70 per day (£8.36).

Injury to feelings bands 6 April 2022

Awards for injury to feelings increased as follows with effect from 6 April:
be:

- A lower band of £990 to £9,900 (for less serious cases).
- A middle band of £9,900 to £29,600 (for cases that do not merit an award in the upper band).
- An upper band of £29,600 to £49,300 (for the most severe cases).



Cases – employment status and related rights

- **Revenue and Customs Commissioners v Atholl House Productions Ltd 2022, CA, and Kickabout Productions Ltd v Revenue and Customs Commissioners 2022, CA, - is a person engaged through a PSC an employee?**
- **Nursing and Midwifery Council v Somerville [2022] EWCA Civ 229 –**
The Court of Appeal confirmed that there is no requirement for there to be mutuality of obligations to determine if someone is a worker when they are engaged under an umbrella contract
- **Chell v Tarmac Cement and Lime Ltd [2022] EWCA Civ 7 -** the Court of Appeal upholds a finding that an employer was not vicariously or directly liable for the injury caused to an external contractor by one of its employees
- **Kocur v Angard Staffing Solutions & anor [2022] EWCA Civ 189 –** The right of an agency worker to be notified of vacancies does not extend to a right to be considered for a post.

- **Smith v Pimlico Plumbers Ltd [2022] EWCA Civ 70**– the Court of Appeal held that a worker can carry over a right to statutory paid holiday if they have taken statutory holiday but have not been paid for it.
- **Harpur Trust v Brazel [2019] UKSC 21** - the Supreme Court held that it is unlawful to pro rate holiday pay for part year workers as they are entitled to 5.6 week’s holiday under the WTR at average pay

- **Sinclair v Trackwork Ltd EAT 0129/20** - an employee dismissed because of 'upset and friction' caused to colleagues by the way in which he implemented a new safety procedure was automatically unfairly dismissed on health and safety grounds
- **Burn v Alder Hey Children's NHS Foundation Trust [2021] EWCA Civ 1791** – in this case the court considered whether there could be an implied term that a disciplinary process should be conducted fairly
- **Fentem v Outform EMEA Ltd [2022] EAT36** – there was no dismissal where an employee gave notice of resignation and the employer brought forward the termination date by making a contractual PILON
- **London Borough of Hammersmith and Fulham [2022] 4** – dismissal for gross misconduct for comments said to bring the employer into disrepute was unfair

- **Gwynedd Council v Barratt and anor [2021] EWCA Civ 1322** - the lack of an appeal is one of the factors to be considered when determining if the dismissal is unfair but is not on its own determinative
- **Rentplus-UK Ltd v Coulson [2022] EAT 81**, the EAT held that the ACAS Code of Practice on Disciplinary and Grievance Procedures applied where the reason for dismissal was purportedly due to redundancy but was in fact discriminatory.

- **Kostal v Dunkley and others UKSC 2019/0153** the Supreme Court held that a one off offer made direct to employees where the employer has not exhausted the collective bargaining process can amount to an unlawful inducement pursuant to s. 145B TULRCA 1992
- **Ineos Infrastructure Grangemouth Ltd v Jones and ors [2022] EAT 82** the EAT held that the employer's unilateral variation of employees' terms as to pay, amounted to an unlawful inducement .s.145BTULRCA
- **Tyne and Wear v RMT [2021] 5 WLUK** – The High Court was allowed to rectify a collective agreement which the employer claimed mistakenly set out the effect of the consolidation of a bonus into basic salary.

Disability

- **Burke v Turning Point Scotland ETS/4112457/2021**, - an employee with long COVID symptoms was disabled under Equality Act 2010.
- **Department for Work and Pensions v Boyers** – an employee dismissed for long term sickness absence was subject to discrimination arising from disability

Religion or belief

- **Scottish Federation of Housing Associations v Jones** - belief in participatory democracy amounts to a protected belief under the Equality Act 2020

Sex Discrimination

- **Dobson v North Cumbria Integrated Care NHS Foundation Trust EATUKEAT/0220/19** – when considering if a requirement to work flexibly amounts to indirect sex discrimination account should be taken of the fact that more women than men tend to have childcare responsibilities and so are less likely to be able to comply
- **Mellor v The MFG Academies Trust – ET case 1802133/2021** – a failure to provide breastfeeding facilities amounted to harassment related to sex discrimination.
- **ACAS guidance** - Asking and answering questions about discrimination at work

- **Forth Valley Health Care Board v Campbell EATS/0003/21** - the failure to provide a part time worker with a paid break after working a four hour shift when full time workers received a paid break after six hours did not amount to less favourable treatment of a part time worker
- **Walsh v Network Rail Infrastructure EA 2020-000724** – an employee’s agreement for his appeal in relation to a flexible working request could be heard after the end of the decision period did not necessarily mean he had agreed to extend the decision period.

- **Kong v Gulf International Bank (UK) Ltd [2021] 9WLUK 125** – an employee who made protected disclosures was not automatically unfairly dismissed. The decision to dismiss was not motivated by a manager who had complained that the employee had challenged her professional integrity,
- **Brake and anor v Guy and ors [2022] EWA Civ 235** - an employee who had used a company email account for personal correspondence had no reasonable expectation of privacy

- **Kelly v PGA European Tour [2021] ICR 1124** – the CA confirmed that an employer's genuine and rational lack of belief in an unfairly dismissed employee's capability to perform the required role meant it was not practicable for the employee to be re-engaged
- **Slade and ors v Biggs and ors EA-2019-000687** – an employment tribunal was entitled to apply an uplift of 25% to the award for injury to feelings and aggravated damages

- **Mercer v Alternative Future Group Ltd and anor (Secretary of State for Business, Energy and Industrial Strategy –**
protection from being subject to a detriment connected to trade union activities does not protect workers who participate in industrial action
- **Chief Constable of the Police Service of Northern Ireland and another v Agnew and others [2019] NICA 32** – appeal to consider whether in a claim for UDW is limited where there is a gap of three months between deductions.
- **USDAW and others v Tesco Stores Ltd [2022] EWCA Civ 978** – the Court of Appeal has overturned an injunction preventing Tesco from firing and rehiring employees in order to remove a contractual entitlement to enhanced pay

A few loose ends...

- **Response to the Taylor Review on employment status** - published 28 July 2022
- **Statutory Code of Practice to address "fire and rehire" practices** - on 30 March 2022 the government announced that it would be issuing a statutory code which tribunals and courts will be required to take into account when considering relevant cases in the summer of 2022....
- **Future of Work Review** - on 12 May 2022, the government announced that Matt Warman MP is to lead this review which is to be conducted over spring and summer 2022.
- **Call for evidence into the UK labour market** - this was launched by BEIS on 27 May 2022 and “aims to build on existing commitments including those the Government made in response to the Taylor Review

What the future holds...

- **Employment rights confined to private members bills**
- **Retained EU Law (Revocation and Reform) Bill 2022**

Conclusion

- Any questions
- LELR
- www.thompsons.law.co.uk