EAT holds TUPE transfer has taken place after share sale

Normally, a share sale would not constitute a TUPE transfer because the identity of the employer does not change. However, the courts have accepted that there may be a transfer of an undertaking to a holding company or a sister company following a share sale. In this case, the control exercised by the parent company of the purchaser of the target's shares and extensive integration exercises carried out by it led to the judgment that there had been a TUPE transfer.

Court overlooks drafting error to enforce restrictive covenant

In Prophet plc v Huggett [2014] EWHC 615, the High Court overlooked a drafting error to enforce a 12 month restrictive covenant which, if interpreted literally, would have been unenforceable. The clause restricted the employee from being engaged or employed in connection with products he was involved with during his employment. As these exact same products would not be sold by a competitor, the clause was effectively useless but the court treated this as a drafting error adopting what it believed to be the true intentions of the parties to cover products similar to those that the employee had dealt with whilst employed.

Error in employer's letter to disabled employee not relevant when considering objective justification

In Crime Reduction Initiatives (CRI) v Lawrence UKEAT/0319/13, the EAT held that a poorly drafted letter inviting the claimant to a disciplinary meeting when it should have referred to a capability meeting which had the effect of deterring her from attending was not relevant to the question of whether her employer had been objectively justified in deciding to dismiss her.

ECJ rules that surrogate mothers are not entitled to maternity or adoption leave or pay

The ECJ has held in two recent cases that mothers who had children via a surrogate and were subsequently denied maternity or adoption leave and pay had not been discriminated against. The court found that there was no sex discrimination because a man who had organised a surrogacy would be treated in the same way. It held that the EU Pregnant Workers Directive protected those who were in a vulnerable position

because they had recently given birth and therefore, “commissioning mothers” would not be protected under it. The ECJ also held that there was no disability discrimination under the Equal Treatment Framework Directive where a woman, who has a disability preventing her from giving birth and whose genetic child has been born via a surrogacy arrangement, is refused paid leave equivalent to maternity or adoption leave.

Dismissal for absence caused by post-natal depression was not discriminatory

The EAT recently held that it is not discriminatory to dismiss a woman for absence due to post-natal depression where that absence continues after the end of her maternity leave. Where an employee is absent after her maternity leave due to a pregnancy related illness, the employer is entitled to take into account the absence after maternity leave and compare that period with any period of sickness of a man.

Covert recordings at grievance and disciplinary

hearings may be admissible

The EAT upheld a Tribunal’s decision that covert recordings made by an employee of her disciplinary and grievance hearings were admissible as evidence.

Disregarding an independent appeal panel’s decision does not render a dismissal unfair

The EAT ruled that an employee had not been unfairly dismissed after her employer disregarded the independent appeal panel’s decision, which overturned the employer’s original decision to dismiss. Given that the employer was a small nursery, there was no other appropriate person to hear the appeal, there were no clear terms of engagement with the independent panel and a subsequent investigation was completed as part of the appeal, the employer was not bound by the appeal panel’s decision.

Managing the managers in your practice by Emma Sell

No matter what size your law firm is, there are ‘managers’ at all levels: support staff managing diaries, finance departments managing finances, lawyers managing their cases and partners managing lawyers. Then there are the practice

managers, who are managing the managers to make sure they manage effectively.

Contractual summary termination provisions are not the Holy Grail

The Employment Appeal Tribunal found that employers cannot rely on contractual summary termination clauses to dismiss an employee without notice where in reality there is no gross misconduct or negligence.

Employees reinstated to old contract after refusing to agree to new contract terms

In Hazel v Manchester College, the Court of Appeal found that two employees who were dismissed for failing to agree to take a pay cut following a TUPE transfer were unfairly dismissed and entitled to reinstatement to their old terms.

Employee inadvertently works for free

The Employment Appeal Tribunal has found that an employee who was not paid on termination of his employment for extra hours worked under a flexi-hours scheme did not suffer an unlawful deduction from wages.

Caste discrimination covered by existing legislation

In Tirkey v Chandok, it was found that a claim for caste discrimination could be brought in a Tribunal under the Equality Act 2010.