

How important are occupational health reports?

In Gallop v Newport City Council, the Court of Appeal found that employers cannot necessarily say they did not know that an employee was disabled even though Occupational Health had diagnosed the employee as not disabled.

Agency workers loophole

The Employment Appeal Tribunal has said that agency workers on open ended contracts with companies are not covered by the Agency Workers Regulations 2010 because they are not 'temporary'.

Proposed TUPE amendments

Parliament has amended the TUPE regulations, which are in force in respect of transfers occurring on or after 31 January 2014.

An employer cannot pay lower redundancy payments to older staff because they are getting a pension as well

The Employment Appeal Tribunal found that a council could not rely on a statutory defence to justify an age discrimination claim. Sefton Council paid redundancy payments in accordance with the Civil Service Scheme. This scheme reduced redundancy payments if employees were eligible to draw a pension as it was thought unnecessary to compensate people drawing a pension for loss of a job to the same extent as if they were still in work.

John McCririck loses age discrimination claim

It was widely publicised before Christmas that John McCririck, horse-racing pundit, lost his age discrimination claim against Channel 4. The Tribunal appears to have found that the decision to dismiss Mr McCririck was not age-related but due to his sexist views, unpalatable presenting style and controversial appearances on reality TV shows. That said, the Tribunal judgment stands up poorly under legal scrutiny and the factual basis for the decision is not entirely clear.

6 month restriction on approaching clients did not need to be limited to customers with whom the employee had contact

In *Coppage and another v. Safetynet Security Limited* a post-termination restriction purporting to prevent an employee for six months after his employment ended from soliciting all customers of the business during his employment was reasonable, and therefore enforceable, despite not being limited to those who were customers for a limited period of time before termination and with whom he had contact.

12 month garden leave clause valid

In *JM Finn & Co v Holliday*, the High Court granted an injunction to keep an employee on garden leave for his 12 month notice period. They rejected the suggestion that not sending an employee market information whilst on garden leave was a breach of contract. Whilst 12 months is a long period, the fact that the employee had received a three fold salary increase when agreeing to a 12 month notice period was relevant.

Paying older workers larger redundancy payments is discriminatory but justified

In order to establish discrimination, a Claimant must establish that they have been treated differently to a comparator whose circumstances are materially the same to their own (with the only difference being a protected characteristic such as age, race, disability etc). In *Lockwood v. DWP*, an age discrimination case, the Court of Appeal gave short shrift to the suggestion that there was a material difference between groups of workers (and therefore no comparator) on the basis of circumstances intrinsically linked to age.

Paying for an employee's private counselling can be a reasonable adjustment

In *Croft Vets Ltd v Butcher*, the Employer Appeal Tribunal found that an employer should have agreed to pay for private psychiatric counselling for an employee who was suffering from work-related stress to help her return to work.

Christian wins case against employer over gay marriage remarks

“In *Smith v Trafford Housing Trust*, Mr Smith posted a link on his Facebook wall to a BBC news article entitled “Gay church marriages set to get the go-ahead” and commented that it was “an equality too far”. In response, his colleague posted a comment on his wall, “Does this mean you don’t approve?”. Mr Smith replied “no, not really, I don’t understand why people who have no faith and don’t believe in Christ would want to get hitched in church. The bible is quite specific that marriage is for men and women. If the state wants to offer civil marriage to same sex then that is up to the state; but the state shouldn’t impose its rules on places of faith and conscience”.

Can you be fairly dismissed for theft when you have been acquitted in a criminal trial?

Yes, according to the Court of Appeal in *Stuart v London City Airport*. Mr Stuart worked at London City Airport until he was dismissed for attempting to steal goods from a duty free shop.

He brought an unfair dismissal claim arguing that LCA had not carried out an adequate investigation, in particular that they had not reviewed the CCTV footage in response to the duty free shop manager's accusation that he was concealing items under his coat.

When can an employee refuse suitable alternative employment?

In *Devon PCT v Readman*, Mrs Readman was a community matron at Devon Primary Care Trust. Her role was focused on managing community and district nursing in a small community hospital which had only 12 beds.