Separate emails but read as one can amount to a qualifying disclosure

For an employee to bring a whistleblowing claim, they first need to show that they have made a qualifying disclosure. In simple terms this means that an employee has made an allegation to their employer which shows that malpractice has taken or will take place or an employee's health and safety is at risk.

Correspondence including a draft settlement agreement marked "without prejudice" are inadmissible as evidence

Where an employee or employer makes a statement (either in writing or orally) which attempts to settle a dispute this will be deemed to be "without prejudice" or as lawyers refer to it – "WP". When a WP statement is made, this ordinarily means that it is off the record and is inadmissible as evidence before a court or tribunal.

Employers’ liability for its agents in discrimination claims

In discrimination cases, employers are responsible for the actions of both employees and their agents. But who is an employer’s agent?

Employer not liable for employee’s physical attack on customer

In Mohamud v WM Morrison, the Court of Appeal found that an employer was not vicariously liable for its employee’s physical assault on a customer because there was not a sufficiently close connection between the employee’s actions and his employment.

Tribunal News

In the last month, a number of new issues have been clarified.

Belief in the Labour Party equivalent to religious belief

In Olivier v Department for Work and Pensions, the Tribunal found a strong commitment to a political party amounts to as much of a protected belief for the purposes of bringing a discrimination claim as a religious belief.

The proportionality test in discrimination

The Court of Appeal said that the concept that ‘not working on a Sunday is not core to Christian belief’ is irrelevant for Tribunals working out whether a Christian’s belief that she should not be required to work on Sundays for faith reasons should be granted.

Dismissing sick employees for long term absenteeism is okay if a reasonable employer

would do the same

The Scottish Courts found that it is potentially reasonable to dismiss a long term absentee employee for ill health even though Occupational Health indicated a potential return within the next couple of months.

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.