Bonus clawback provisions designed to disincentivise an employee from resigning were lawful and not in restraint of trade.

In *Steel v Spencer Road LLP t/a The Omerta Group*, the High Court has ruled that provisions in an employment contract requiring repayment of a discretionary bonus if the employee resigned with three months of the bonus payment date were lawful and not a restraint of trade. The result was that the employee was obliged to repay a discretionary bonus of £187,500.

What happened in this case?

Mr Steel was employed by Omerta, a global executive search firm. He was entitled to participate in a discretionary bonus scheme intended to reward good performance and incentivise staff to remain in employment. Entitlement to a bonus was conditional on Mr Steel remaining in employment and not being under notice to terminate (whether given by him or Omerta) on the bonus payment date, or in the three-month period that followed. In the event that these conditions were not met, the contract provided that Omerta was entitled to clawback the bonus as a debt. It also provided that Mr Steel would indemnify Omerta for any costs, fees and charges it incurred in enforcing recovery of the bonus payment.

In January 2022, Mr Steel was paid a bonus of £187,500 (almost three times his basic salary of £65,000). Mr Steel gave notice to terminate his contract on 22 February 2022. In line with the bonus clawback provisions in the contract, Omerta sought repayment of the bonus. Mr Steel refused to comply and Omerta served a statutory demand for the bonus monies, plus legal fees of over £12,000. Mr Steel applied to set aside the statutory demand. He argued that the bonus clawback provisions were unenforceable on the grounds they amounted to a restraint of trade (i.e. terms which restricted his freedom to work for others) and/or a penalty clause.

The Judge found that the bonus clawback provisions did not fall within the restraint of trade doctrine. In reaching this decision, the Judge relied on the decision in *Tullett Prebon v BGC Brokers [2010] EWHC 484 (QB)*. In that case, it had been held that clauses which required the repayment of retention bonuses in the event that the employee resigned before the end of specified term were not provisions in restraint of trade. This was because they did not affect an employee's freedom to take up other employment after leaving.

The Judge commented that there might be circumstances where the severity of the consequences were clearly out of all proportion to the benefit received, but this was not arguable in Mr Steel's case, where the conditions attached to the bonus payment were said to be *"very moderate".* The Judge also held that the argument that the bonus clawback provisions operated as a penalty clause had no real prospect of success.

Mr Steel appealed the decision on the restraint of trade point only to the High Court. In the meantime, he repaid the bonus to Omerta.

What was decided?

The High Court Judge noted that the restraint of trade doctrine requires a two-stage test. First, whether a particular contract is a restraint of trade. If it is, then the contract will only be enforceable if it is reasonable with reference to the interests of the parties and the public. However, this appeal was solely concerned with the first of these two questions, since if the bonus clawback provisions *were* a restraint of trade, it was not disputed that the statutory demand would fall to be set aside.

Mr Steel's primary ground of appeal was that the Judge should not have followed the decision in *Tullett Prebon* because it had been wrongly decided, and, instead, should have followed the decision in *20:20 London v Riley [2012] EWHC 1912 (Ch)*. The *20:20 London* case did not concern bonus payments in employment contracts, but whether a clause requiring a defendant to repay the proceeds of a business sale if he left the business within three years of the sale was a restraint of trade. In that case, the Judge said that the defendant's argument had reasonable prospects of success and allowed the claim to proceed to trial. Mr Steel said this decision demonstrated that a contractual financial disincentive to resign was, on its face, a restraint of trade.

The High Court Judge decided to follow the decision in *Tullet Prebon*, given that it was the only authority which directly addressed whether a bonus clawback provision in an employment contract was a restraint of trade. In contrast, the *20:20 London* case concerned a wholly different type of contractual provision. Further, the High Court Judge did not consider the reasoning in *Tullett Prebon* to be wrong, noting that there was no doubt that making a bonus entitlement conditional on

remaining in employment for a period of time would deter an employee from resigning. However, this did not mean it was a restraint of trade: an employee in this situation is still free to go and work elsewhere without restriction. Therefore, this ground of appeal failed.

Mr Steel also argued that the Judge had failed to consider the impact of other clauses in the contract which operated as a significant disincentive to resign. In particular, while the bonus clawback provisions disincentivised him from resigning within three months of the bonus payment date, he was also subject to a three-month notice period, which meant that he would have to stay in employment for a minimum of six months after the bonus payment date in order to retain the bonus. Further, he was subject to post-termination covenants, including a three-month non-compete restriction. However, the High Court Judge dismissed this ground of appeal, noting that the conclusion that the bonus clawback provisions were not a restraint of trade was unaffected by the fact there were other contractual provisions imposing other restrictions.

The High Court Judge rejected two further grounds of appeal.

What does this mean for employers?

Employers will welcome this decision, since it underlines that contractual conditions designed to deter resignation following the payment of a bonus are enforceable, provided that they do not restrict an employee's ability to work elsewhere after leaving. Furthermore, the lawfulness of such conditions is assessed in isolation, rather than looking at the cumulative

effect of all restrictions within the contract, such as notice periods and post-termination covenants.

However, employers should be mindful of the observation that if the severity of the consequences are "out of all proportion" to the benefit received, then it is possible that that such conditions could be unenforceable. The High Court did not made give examples of what it meant by this but we can surmise that if, for example, a vulnerable employee's salary was artificially suppressed and the discretionary bonus, in fact, represented what should have been their actual remuneration and the contract allowed it to be clawed back for a lengthy period post-termination, it could be argued that a bonus clawback provision effectively handcuffs the employee to the employer in order to receive their basic remuneration.

A point that did not arise in this case is the application of good leaver provisions. Senior employees will expect good leaver provisions to be carved out of bonus clawback arrangements, meaning that a bonus would not be repayable in circumstances where the employee left in the restricted period but was a "good leaver". If the good leaver provision extends to situations where the employee is terminated "without cause", employers should remember that this could potentially cover employees who resign in response to a repudiatory breach. Therefore, employers would be well advised to seek legal advice on the drafting of such provisions to make sure that they are reasonable, clear and achieve the desired effect.

Steel v Spencer Road LLP t/a The Omerta Group

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City of London. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.

Failure to notify employee about reorganisation and new roles was maternity discrimination

In *Smith v Greatwell Homes*, an Employment Tribunal has held that a failure to notify an employee on maternity leave about a business reorganisation, and the new roles within it, was an act of maternity discrimination.

What happened in this case?

Ms Smith began working for Greatwell Homes in 2019 as a Business Improvement Analyst. She had a heavy workload, including taking on a significant part of her line manager's role after she went off sick and then left the business. Ms Smith was regarded as a valuable and ambitious member of staff and was encouraged to apply for a more senior role with line management responsibilities when one became available.

Things seemed to change in April 2020, after Ms Smith told Ms

Herzig, the Head of Property Services and Compliance, that she was pregnant. This was not passed on to Human Resources, and Ms Smith had to provide this information to them on two further occasions. Later that month, she was excluded from a bonus Friday off work which was given to staff as a goodwill gesture during the pandemic. Ms Smith was told that she was not eligible because she did not work on Fridays. She challenged the decision, but Greatwell refused to extend the scope of the offer.

Ms Smith started her maternity leave in early September 2020. On 5 April 2021, Ms Smith received a text message from Ms Herzig, informing her of a number of changes to the workplace which had just taken place, namely the appointment of a Mr Syed as Ms Smith's new line manager and the appointment of a Ms Perkins into the new post of Governance and Assurance Manager. Both roles represented opportunities of the sort that Ms Smith had previously been told she should apply for when the chance came along. Ms Smith was unhappy about the text, and the general lack of communication during her maternity leave. She raised a grievance, which was rejected although partially upheld on appeal.

In August 2021, Greatwell began to send job adverts to Ms Smith, including a "re-advertisement" of the Governance and Assurance Manager occupied by Ms Perkins. Greatwell claimed this was the start of the process of recruitment for the permanent role, due to commence eight months later. However, Ms Smith resigned on 31 August 2021 and brought an Employment Tribunal claim alleging that she had been subjected to discrimination and/or detriments because she had been on maternity leave. At the heart of her claim was the failure to communicate the job opportunities and the changes to the workplace.

What was decided?

The Tribunal found that Greatwell was obliged to notify Ms Smith of the *"sweeping changes"* to the organisation of the business at the same time as other staff. Ms Smith needed to know about the changes in order to be in a position to apply for the new roles. The staff members who had applied for the roles had all been at work at the time and were informed of the changes. In contrast, Ms Smith had been on maternity leave and was not so informed. The consequence was that she was denied the chance to compete with the other applicants and progress her career.

Greatwell's explanation for this unfavourable treatment was, said the Tribunal, *"inconsistent and confusing"*. However, evidence from two senior witnesses from the business repeatedly highlighted that the reason for the difference in approach was because Ms Smith was on maternity leave, which the Tribunal said were *"tantamount to admissions"*. The Tribunal concluded the reason Greatwell had excluded Ms Smith from the recruitment process was because the positive view Ms Herzig had once had of her was *"…eroded by the knowledge that she had become pregnant and was on maternity leave".* Even if this was a subconscious attitude, it was clear that this was the reason. The Tribunal noted that the re-advertisement of the Governance and Assurance Manager role was *"…window dressing, an attempt to disguise the perceived treatment that had gone before".*

Considering all of the evidence given on behalf of Greatwell in the round, the Tribunal concluded that it revealed *"lazy and unfair assumptions"* that those on maternity leave:

- will insist on taking the full 12 months' leave;
- cannot, or will not, return to work before this;
- should not be given the opportunity to make decisions about these issues for themselves;
- are less useful assets in the workplace; and
- are less likely to be the solution to staffing problems where an immediate response was needed.

The Tribunal also went on to criticise other aspects of Greatwell's treatment of Ms Smith. It said that the response to the notification of her pregnancy was symptomatic of their attitude towards the fact she was pregnant. And the refusal to allow her the bonus day off was a further indication of their general approach to diversity issues, amounted to indirect sex discrimination and was also *"deeply unsympathetic"* to Ms Smith. Finally, the handling of Ms Smith's grievance was *"neither thorough or fair"* and the Tribunal inferred from this a generally negative attitude towards Ms Smith, the fact that she had been on maternity leave and had raised a grievance.

Both the discrimination and detriment claims were upheld. Before the Tribunal ruled on compensation, the parties agreed that Greatwell would pay the sum of £50,000 to Ms Smith.

What does this mean for employers?

Employers should pay careful attention to the Tribunal's criticisms of the employer in this case. The dismissive and unfair attitudes shown to the employee even before she went on maternity leave helped to paint a picture of an employer who did not treat pregnant employees well. Although they may seem like relatively small matters in themselves, when added to the later events, they were particularly unhelpful. Care should be taken that notification of pregnancies are handled efficiently and with sensitivity and warmth. Failure to do so could contribute to an inference of discrimination being drawn.

Employers should seek to agree an appropriate level of communication with employees going on maternity leave. Certainly, staff should not be bombarded with the workplace communications, but nor should they be frozen out, as appeared to the case here. Clearly, employers should agree to send communications about matters of importance affecting the employee, such as a business reorganisation or redundancies. However, care should also be taken to send communications about work social events and training. In one case, a failure to invite an employee on maternity leave to an informal Christmas drinks party was held to be an act of maternity discrimination.

Perhaps most importantly, employers need to put time into embedding enlightened attitudes towards employees taking maternity leave (and other forms of leave such as shared parental leave). The negative assumptions about women on maternity leave found to be held by Greatwell staff are surprisingly common. Training should be given to managers to address these attitudes, which are sometimes unconsciously

held.

Smith v Greatwell Homes Limited

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.

BDBF ranked in The Times Best Law Firms 2024

BDBF is delighted to have been ranked in The Times Best Law Firms 2024 for employment law. We are proud of our incredible team for all their hard work and grateful for the positive feedback received. Congratulations to all our peers listed and recognised. Read more **here**.

National Work Life Week 2023

National Work Life Week is an annual campaign designed to highlight the importance of creating a healthy balance between our working life and our personal life. But what should

employers do when an employee's personal problems begin to take over their work life? Studies show that 47% of employees admit that their personal problems sometimes affect their performance at work. Here, BDBF explore some major life events that could impact an employee's working life and consider how employers can go the extra mile to support staff during difficult personal times.

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How can employers help staff experiencing financial difficulties?

When might an employee experience financial difficulties?

With the UK currently facing its worst cost-of-living crisis in decades, many are feeling the negative effects of increasing financial pressure. A recent YouGov survey commissioned by the Chartered Institute of Personnel and Development found that only half of all workers are keeping up with all their bills and credit commitments without any difficulties. Despite rates of inflation falling slightly in recent weeks, the cost for essentials such as food, housing and energy is still much higher than in previous years, placing a significant strain on household budgets.

Financial difficulties may also arise as a result of a major life change which causes income to drop and outgoings to increase, for example:

- a separation or divorce;
- a bereavement;
- helping to fund a child at university;
- helping to fund a parent going into a care home; or
- an unexpected increase in accommodation costs.

Why is this a workplace problem and what can employers do to help?

Financial stress can have an array of negative impacts both on employee performance, conduct and wellbeing. In some cases, financial stress could even lead to employees being too unwell to work. This may only serve to compound the situation if they reach the point of being reliant on Statutory Sick Pay, which is currently capped at £109.40 per week.

While there is no legal obligation to assist employees in financial difficulties, it is often in an employer’s

commercial interest to help them. Fortunately, there are some simple things that employers can do to reduce the financial burden on employees and to ease the stress associated with financial concerns.

Salary increases, one-off payments and loans

Employers could bring forward annual review dates for salary increases and bonus payments. Where an annual review of salary is brought forward, the date upon which any increase becomes effective can also be brought forward to allow the employee to benefit from the increase for a longer period.

Consideration could also be given to making a one-off hardship payment to an employee. Communication around any such one-off payment is important. It must be clear that this is an isolated discretionary payment and not one which forms part of the employee's remuneration package.

Another option would be to offer an interest-free loan with a long repayment term. Further, if the employee already has an outstanding company loan (e.g. season ticket loan) consider cancelling or suspending the repayments.

Salary sacrifice arrangements

On one hand, salary sacrifice arrangements (whereby an employee gives up the right to receive part of their salary in return for certain non-cash benefits), are one way in which indirect financial support can be provided to an employee by making savings on tax and national insurance.

On the other hand, where an employee is in severe financial difficulty, they may be better off suspending the sacrifice and taking the higher salary for a period of time. It is important to note that HMRC does not allow employers to stop and start salary sacrifice schemes at will. However, where there are good reasons, it will usually be permitted.

Discounts, subsidies and financial advice

Offering discounts and subsidies to staff is another way to provide indirect financial support for employees. This could include discounts on the employer's own goods and services where appropriate (for example, a supermarket may offer a staff discount). Alternatively, employers may enter into agreements with other organisations to provide discounts on their goods and services, such as restaurants or gyms. Discounts can usually be run at a low cost to the employer, whilst helping to reduce day to day expenses for employees.

Providing lunch or a lunch allowance can be another effective way to lower employee costs. To some extent, the effectiveness of these practices will depend on how they interact with any flexible working arrangements that are in place.

Another simple way to help is by pointing the employee in the direction of free debt advice services for example, the National Debtline or the Money Adviser Network or funding the cost of a private financial advisor or debt adviser.

Flexible working and wellbeing support

Flexible working may help employees encountering financial difficulties. For some, working from home more regularly will reduce expensive travel costs, or the amount spent on childcare. In contrast, other employees may wish to attend the office more regularly to minimise electricity and heating bills.

As discussed above, financial problems can be a difficult burden to manage. Employers should consider what can be done to support the mental wellbeing of those in this situation. For example, signposting the employee to an Employee Assistance Programme or paying for them to access private counselling. Line managers can also offer support here, by way of regular check-ins to monitor their ongoing wellbeing.

Where an employee is absent from work with stress, it is important to seek advice from their GP or Occupational Health about any adjustments that can be made to ease their situation and help them return to work.

Assisting employees – a balancing act

It can be challenging for an employer to know exactly how to help an employee facing financial difficulties. Where feasible, it is a good idea to involve the employee in this process by asking them what form of assistance would be most helpful to them and use any feedback to make an informed decision. In any case, employers should seek legal advice on their proposals and ensure that such proposals are communicated clearly and considerately.

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City of London. If you would like to discuss any issues relating to the content of this article, please contact Amy Hammond (AmyHammond@bdbf.co.uk), Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.

Disabilities in the workplace – Lunchtime Webinar – Wednesday, 11 October 2023

In this 1-hour webinar, BDBF Partner Clare Brereton and Associate Anthony Nzegwu explore what constitutes a disability and, where a disability is identified, discuss what obligations employers may have. This webinar was originally delivered on 11 October 2023 and reflects our understanding as of that date. Do get in contact with either of the speakers if you would like to discuss any of the issues raised.

To view the PDF webinar slides please click on the image below, or view the recording of the webinar:

https://www.youtube.com/watch?v=LV8-YesQlfw

Please contact Clare Brereton (ClareBrereton@bdbf.co.uk), Anthony Nzegwu (AnthonyNzegwu@bdbf.co.uk) or your usual BDBF contact, for further advice.

Divorce and the workplace: what can employers do to support employees?

It is widely acknowledged that divorce is one of the most stressful life events that a person can ever go through. Given that most of those who divorce are of working age, employers should take care to understand the needs of divorcing employees and the potential risk areas. In this article, we consider the ways in which divorce may affect an employee at work and what employers can do to help.

Why exactly is divorce so difficult?

Divorce sets in motion a host of extremely challenging issues which usually have to be dealt with at the same time. This could include some, or all, of the following:

- Dealing with the emotional distress of the relationship ending (accentuated where the relationship was abusive) and also helping any children deal with the change.

- Adjusting to the loss of the family unit and managing loneliness and uncertainty.

- Leaving the marital home and living in insecure accommodation for a period of time.

- Worsening of both the immediate and long-term financial situation.

- Having to establish arrangements for shared contact with any children and potentially having increased responsibility for childcare arrangements.

- Losing established support networks (e.g. spouse’s family and mutual friends).

- Coping with disapproval from family, friends and/or a religious community.

On top of all of this, in most cases, legal assistance will be required to formalise the divorce and the post-divorce arrangements regarding finances and/or children. This can involve significant legal fees at a time when finances are already stretched. The average cost of a divorce in the UK in 2021 was £14,651.

In acrimonious divorces, the legal process is likely to become protracted and involve costly Court battles to divide up the marital assets and determine issues such as maintenance payments, child custody and contact arrangements. In relationships where abuse was present, the process is even more high stakes, with a fact-finding hearing to determine the allegations of abuse likely to be needed, together with an assessment by Cafcass – the Children and Family Court Advisory and Support Service.

Even the most resilient amongst us would be knocked off course by these challenges.

How might divorce affect your employee at work?

At the very least, a divorcing employee will feel preoccupied by the process – it is time consuming, and they will face lots of practical changes. However, the increased emotional and financial stress, combined with the loss of support, may also lead to anxiety, depression and/or lead to substance abuse. In a 2023 survey conducted by the Positive Parenting Alliance (**PPA**), 95% of respondents reported that their mental

health suffered when divorcing.

This is not just a personal problem for the employee – it creates the risk of the following workplace problems arising:

- **Performance**. Your employee may find it hard to focus on work and get through their workload in the usual way. There may also be a dip in the quality of work produced.

- **Conduct**. The increased stress could manifest in various ways, with one employee becoming more short-tempered or abrupt than usual, while another may become upset and tearful easily. Where the person's spouse also works for you (or mutual friends of the divorcing couple do) the risk of cold shouldering or arguments at work is raised.

- **Sickness absence**. Another major risk is sickness absence. The PPA survey reported that 39% of divorcing employees had to take either sick leave or unpaid leave. Yet the loss of one of the remaining sources of stability in an employee's life (i.e. their work routine) could well serve to compound the stress they are under. In serious cases, the employee's ill health may mean they are regarded as disabled for the purposes of the Equality Act 2010.

What can you do to support an employee going through a divorce?

In the PPA survey, just 9% reported that their employers had policies or support in place to help them through their divorce. However, things are changing. Earlier this year, the PPA worked alongside several major UK employers (namely, Asda, Tesco, NatWest, Metrobank, Unilever, Vodafone and PwC), to embed policies and support for staff going through a divorce or separation.

So, what steps can employers take to help employees through one of the most difficult times of their lives?

The starting point is to be compassionate and patient. Accept that this is an extraordinary time in the employee's life, and they will come out the other end. In the meantime, there is no getting away from the fact it will be a difficult time for them.

Where work conduct or capability is affected to a degree which you cannot overlook, consider what you can do to help the employee turn things around before jumping to instigate a formal process (which will likely only worsen their situation). A combination of the following things could make a difference:

- **Offer additional paid and/or unpaid absence**. Divorce eats up time. Could you offer them additional paid and/or unpaid leave to deal with particular flash points such as Court hearings, moving house or settling children into new schools?

- **Offer to change the employee's working pattern**. Could you offer a flexible working arrangement to help the employee accommodate things such as legal appointments, child pick-ups or counselling sessions? Could you allow them to take more frequent breaks during the working day if they feel overwhelmed or need to make a personal call?

- **Offer to change the type of work the employee has to do**. Think of ways that you can reduce the burden on an employee suffering with stress. Could you reallocate some of the employee's duties for a period of time? Could you redeploy them to a more straightforward role on a temporary basis? It is important to remember here that any changes to a person's job role should be agreed with them and not imposed unilaterally.

- **Offer wellbeing support**. There are a wide variety of things you can do to help support an employee's wellbeing. Offer regular check-ins with a line manager to help the employee prioritise their workload and identify any particular pressure points (e.g. Court hearing dates or moving house). Do you have mental health first aiders in place that the employee can confide in at crisis points? Do you have an employee assistance programme that includes counselling support? If not, would you be prepared to pay for a private counsellor service? Do you have a quiet space in the workplace where they can retreat to when feeling overwhelmed?

- **Offer practical support**. Could you set up an internal

network for people in a similar situation, and bring in relevant experts to speak to the group, for example, a family lawyer, child psychologist or financial advisor specialising in post-divorce matters? If you have an employee assistance programme, does it include the provision of legal assistance?

- **Offer financial support and benefits**. Divorce is likely to place the employee under significant financial pressure. Consider whether you can do anything to help ease this. Could you bring forward a pay rise or bonus, or make a one-off hardship payment? Could you offer an interest free loan or suspend or cancel repayments on any existing loan? Could you commit to improving your pension contributions to help rebuild a pension which will be split in the divorce proceedings? Do you have benefits available which the employee had not previously accessed, but which could now be helpful to them (e.g. a workplace nursery or childcare vouchers)? Explore with them what you have available.

- **Consider reasonable adjustments**. If the employee is suffering with mental health difficulties, it would be wise to consider whether they are disabled. Seek advice from their GP and occupational health and explore whether any reasonable adjustments can be made to remove any disadvantage caused by any working practices. Acas has recently published guidance on making reasonable adjustments for mental health – you can read more about this in our briefing here.

In cases of a serious deterioration in performance or conduct, or a very lengthy absence, you may have no option but to start a formal process, but do still make allowances for the situation the employee is in. Consider the issue within the context of the employee's overall employment record. Offer support and give them a reasonable opportunity to rectify the issue or return to work.

If they are disabled, don't forget to consider adjustments – including to the relevant process itself. For example, it may be reasonable to allow an employee who is feeling vulnerable to be accompanied to a hearing by a friend or family member rather than a colleague. Or it may be reasonable to allow the employee more time than you ordinarily would to improve their performance or return from a period of sickness absence.

Final thoughts

Be compassionate and remember that the acutely difficult phase will not last forever. Show patience and proactively offer your support. This will help your employee get to a "new normal" sooner rather than later and it is something that they are unlikely to forget.

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How do you help an employee you suspect is the victim of domestic abuse?

This week marks National Work Life Week, an annual campaign to highlight the importance of balancing work and personal life. From our perspective we often see issues arise where an employee's personal circumstances begin to impact their work. Some of these personal issues can be relatively harmless, but what if they are more serious? For example, what if you suspect that someone at work is being subjected to domestic abuse at home?

Most employers are aware of their obligations to prevent abuse and violence in the workplace, but since the increase of home working with lines blurring between the home and the office, should employers support those suffering at home?

During the lockdown periods, there was a significant surge in victims seeking support for domestic abuse. Indeed, in January 2021 Business Minister Paul Scully MP wrote an open letter to all employers urging them to consider what can be done to help survivors of domestic abuse. The open letter rightly pointed out that domestic abuse is still a taboo subject, and few employers have any coherent workplace policy or support framework to deal with the possibility that its workers could be victims of domestic abuse.

Given the strides forward so far as mental health at work is concerned, why shouldn't the same apply in relation to domestic abuse? Employers wishing to develop a workplace policy and support framework should consult the guidance on managing and supporting employees experiencing domestic

abuse published by the Chartered Institute of Personnel Development (**CIPD**) and the Equality and Human Rights Commission (**EHRC**) in 2020 (the **Guidance**).

The Guidance sets out tips on how to develop a workplace domestic abuse policy setting out useful guidance and information on how to access support. In addition to a policy, employers should consider offering training to staff to help them spot the signs and know what to do if they suspect a colleague is being subjected to domestic abuse. More generally, employers should send a clear message that all staff should feel comfortable raising these issues and in doing so that they will be supported. A poster, email or information on the intranet, with details of support groups is a great start. Small things can make a big difference.

As far as developing a support framework is concerned, the Guidance recommends that the following four key steps are taken.

Recognise the problem

Employers are in a unique position to identify changes in their employees' behaviour which could indicate abuse. For example, if an employee is suddenly more withdrawn, overly critical of themselves and their work, there is an unexpected dip in their performance or change in the way they dress, for example, excessive clothing on hot days. These cues may be subtle to begin with, but, over time, may build to reveal the reality of incredibly difficult personal circumstances.

If an employee makes indirect references to their partner's (or other family member's) abusive or controlling behaviour, it is important to respond by asking open and empathetic questions to try to get them to open up further about what is

happening. However, extra care should be taken when raising things with people working from home, as the abuser might be monitoring the employee, which might trigger further abuse.

It is also important not to make assumptions. Domestic abuse can happen to anyone – it can happen to men and it can arise in same-sex relationships. Abuse can also take many different forms including: coercive control, economic abuse, online or digital abuse, harassment and stalking, psychological and sexual abuse.

Respond appropriately to a disclosure

Where an employee makes a disclosure that they are a victim of domestic abuse, it is important to listen, show empathy and compassion and take care not to place blame on the victim. Acknowledge how brave it is to talk about domestic abuse.

The next step is to reassure the employee that the organisation understands how domestic abuse may affect their work performance and outline the support that can be offered.

Provide support

But it is not just about offering a shoulder to cry on, there are many practical ways for employers to offer help too, including taking the following steps.

- Ask line managers to check in frequently with employees so that they can raise any concerns or worries and offer support to them.

- Offer flexibility to enable an employee to sort out financial, housing, legal and childcare issues. This could even extend to offering a period of paid leave.
- Offer a private space for employees to make calls or do other administrative tasks that they may not be able to freely do at home.
- Be mindful of the employee's safety at work. Divert phone calls and email messages and change a phone extension if an employee is receiving harassing calls. Look at how non-employees access the building. Ensure the employee does not work alone or in an isolated area and check that arrangements are in place for getting safely to and from work.
- Consider whether you can offer financial support, such as providing interest-free loans to cover immediate financial costs. Ask if the employee would like salary payments to be made to a different bank account.

Refer to the appropriate help

Domestic abuse is a sensitive and complex issue. It is important to be clear on the role and responsibilities of HR and line managers and set boundaries to protect their own wellbeing. HR and line managers are not experts, nor are they counsellors. However, they should be able to signpost employees to specialist help.

Put together a list of national and local domestic abuse support services which can be given to employees when needed. Some national organisations that offer support and resources are listed below. These organisations can also provide advice

and guidance to HR and line managers who are supporting domestic survivors.

Conclusion

Dealing with the possibility that an employee may be the subject of domestic abuse is a terrifying prospect and most employers would be fearful of getting it wrong. The primary way to begin tackling this deeply complex and frightening situation is by raising awareness, offering an open and trustworthy environment for victims and offering meaningful support.

Further support can be found here:

National Domestic Abuse Helpline: 0808 200 0247 or visit https://www.nationaldahelpline.org.uk/

Women's Aid: www.womensaid.org.uk

Rights of Women: www.rightsofwomen.org.uk

Men's Advice Line: 0808 801 0327 or visit www.mensadviceline.org.uk/

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What would a Labour Government mean for employment law?

Earlier this month, the Labour Party published a Green Paper entitled *A New Deal for Working People*, setting out its proposals for changes in workplace rights. The ambitious document sets out over 50 proposals for change across a range of areas. In this briefing we discuss five key aspects of the Green Paper that have the potential to lead to a major shake-up of employment law.

Creation of a single worker status

Currently, we have a three-tier approach to employment status in the UK: "employee", "worker" and "self-employed". Worker status covers both employees and a wider group of workers who are engaged under a contract where: (i) they are required to work personally; and (ii) the employer cannot be described as a client of the individual's own business. Therefore, all employees are workers, but not all workers are employees.

The Green Paper argues that secure and safe work is jeopardised by certain employers exploiting the complexity in this three-tier system. Moreover, it is difficult for individuals to know where they stand, and, as a result, they often do not know their basic legal rights. To resolve this problem, the Labour Party proposes that a single employment status of "worker" should apply to all but the genuinely self-employed. It is not clear whether the existing worker status test will be retained, or whether a brand-new test will be

introduced.

All workers will be afforded the same basic employment rights, for example, sick pay, holiday pay, parental leave, protection against unfair dismissal *"and more".* The practical result is that those who qualify as workers under the existing system will receive a fairly significant upgrade in their employment rights, including the right to claim unfair dismissal. The position for employees will not change as a result of the merger of status, save that they will be known as workers, rather than employees.

Strengthening unfair dismissal protection and other employment rights

Currently, only employees are protected from unfair dismissal, and they will usually need two years' continuous service to bring a claim. The exception to this is where the principal reason for the dismissal is "automatically unfair" (e.g. because the employee has blown the whistle or because the employee is on maternity leave). In automatically unfair dismissal claims, there is no need for the employee to have accrued two years' service – it is a Day 1 right.

Prior to April 2012, the qualifying period to bring an unfair dismissal was one year, and many commentators expected the Labour Party to bring back this threshold if it came to power. However, the Green Paper takes a more radical approach, promising to abolish the service requirement altogether and make unfair dismissal a Day 1 right for all workers.

Coupled with this, the Green Paper also promises to remove the caps which limit compensation in employment claims, with the result that *"workers* [will] *receive full compensation without statutory limit if they suffer loss because of employers' breaches of the law".* It is not entirely clear whether the intention is to remove the caps on compensation on some, or all, statutory employment claims (and if not all, whether unfair dismissal will be covered).

However, assuming that the cap on compensation for unfair dismissal *is* to be removed, then the end result of these proposals would be to put an unfair dismissal claim on a par with a discrimination claim in the sense that it would be Day 1 right available to all workers offering unlimited compensation. If this comes to pass, dismissal will become more dangerous territory for employers as the prospect of getting it wrong risks more claims and higher compensation awards.

On top of this, the Green Paper also promises to remove qualifying periods for other basic rights such as sick pay and parental leave. Promises are also made to strengthen other employment rights including for pregnant workers, whistleblowers, those facing a redundancy, and those being transferred to a new employer – although it has to be said these promises are light on detail.

And, finally, tucked away towards the end of the Green Paper, is the brief statement that time limits for Employment Tribunal claims will be extended. Again, the detail is light, and we don't know whether this will apply to all claims or just a certain class of claims, or what the new time limits will be. Currently, the time limits for the majority of statutory employment claims is three months less one day from

the cause of action (albeit that this may be extended by the Acas Early Conciliation process). A six-month time limit has been mooted in the past for pregnancy (and other) discrimination claims.

Discrimination and inequality

The Green Paper promises to require employers to create and maintain workplaces and working conditions free from harassment, including by third parties. Currently, employers are not strictly obliged to take steps to prevent harassment at work and workers are not protected from harassment by third parties. The Worker Protection (Amendment of Equality Act 2010) Bill is on its passage through Parliament and will introduce a legal requirement for employers to take reasonable steps to prevent sexual harassment at work (but not harassment related to other protected characteristics). The Bill had originally sought to introduce protection from third party harassment, but this was recently dropped from the Bill. Therefore, Labour's proposals go further by introducing a duty to prevent harassment across the board and by introducing protection from third party harassment.

As far as pay transparency is concerned, employers with 250+ staff will be required to report on their ethnicity pay gaps – a proposal that was mothballed by the Conservative Government. In addition, Labour are seeking to drive efforts to close pay gaps by forcing employers to not only report on their gender and ethnicity pay gaps, but to devise and implement plans to eradicate any such pay gaps. Gender pay reporting was introduced in 2017 under the mantra *"what gets measured gets managed".* But after years of disappointing gender pay gap results, with little movement in the right direction, it is apparent that mere reporting is not

enough. The requirement to take concrete action should be welcomed, although it remains to be seen what the consequences will be for failing to succeed in closing a pay gap.

Better family friendly rights

The Green Paper makes a host of promises to improve the position for working families including:

- extending maternity and paternity leave (nothing is said about adoption leave);
- reviewing the “failed” shared parental leave system;
- introducing a new right to bereavement leave;
- strengthening the rights of workers to respond to family emergencies with paid family and carer’s leave; and
- making it unlawful to dismiss a woman whilst pregnant or for six months after her return from maternity leave, save in certain circumstances (which are not specified).

Again, we must await the detail of how these rights will be enhanced, but if these changes come to pass, employers will need to be ready to rewrite Staff Handbooks and revisit any enhanced pay offerings. What can be said with some certainty

is that most employers (and employees) would welcome an overhaul of the cumbersome shared parental leave system.

Labour also promise to make the right to request flexible working a Day 1 right. The Conservative Government have promised to do the same and has said legislation will be introduced in July 2024.

Right to disconnect and protection from surveillance

Several EU member states have introduced domestic legislation or guidance on the right to disconnect, including France, Italy, Spain, Belgium, Ireland and Portugal. In 2021, a House of Lords Select Committee called upon the UK Government to introduce a right to disconnect law. However, currently, there is no legal right to disconnect in the UK.

The Green Paper states that Labour will give workers a right to disconnect from work outside their normal working hours and not be contacted by their employers. It is not yet clear what, if any, exceptions will be made to this new right and what the consequences for breach will be.

Labour also promises to protect workers from surveillance by employers by requiring proposals to introduce surveillance to be subject to consultation and the agreement of either trade unions or elected staff representatives.

What else?

There are many more proposals in the Green Paper covering a wide range of areas including:

- banning zero hours contracts and introducing greater security in working patterns for workers;
- outlawing the practice of fire and rehire;
- raising the minimum wage to at least £10 per hour for all workers and assessing how to raise the National Living Wage;
- a suite of measures to strengthen the role of trade unions; and
- introducing a single enforcement body to enforce workers' rights.

The proposals in the Green Paper are to be debated at the Labour Party conference in October 2023. We can expect those that pass muster to make their way into the Labour Party's Manifesto for the imminent General Election. And with the bookies' money on the next Government being a Labour Government, it may not be long before some of these proposals become law.

The Labour Party: A New Deal for Working People

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New law passed giving workers the right to request more predictable working patterns

On 18 September 2023 the Workers (Predictable Terms and Conditions) Act 2023 received Royal Assent and became law. The Act gives workers (and agency workers) a statutory right to request more "predictable" working patterns. Our briefing explains what the new right involves and the steps that employers will need to take to prepare.

When will a worker be able to make a request?

It is expected that workers will need six months' service in order to be eligible to make a request, although this will not need to be continuous service. The service requirement will be set out in regulations which have yet to be published.

Where eligible, workers will be able to request a more predictable working pattern where their current work pattern lacks certainty in terms of hours, days and/or times

worked. "Work pattern" also covers the length of the contract, and a presumption is made that a fixed-term contract of under 12 months lacks predictability. The purpose of the request must be to achieve a more predictable working pattern.

Are there any rules on how such requests must be made?

A request will need to be made in writing, state that it is a request for a more predictable working pattern and set out the proposed change and the date on which the worker wants it to take effect. Further regulations may be made about the precise form that such applications must take.

Up to two applications may be made in a 12-month period, although these may not be made concurrently. It is worth noting that this limit includes any similar requests made under the separate flexible working regime (i.e. where the flexible working request is for a change that would have the effect of delivering a more predictable contract).

What duties will an employer have in relation to such requests?

Employers must deal with such requests in a "reasonable manner", although this is not defined in the Act. Acas are set to publish a new statutory Code of Practice which will provide further guidance on how employers should handle such requests. We expect that employers will be asked to hold a meeting with the worker and give them the opportunity to make representations in support of their application.

The employer must notify the worker of its decision within one month of receiving the application. If the employer grants the request, the employer then has a further two weeks to offer the worker a new contract with terms and conditions that, overall, are not less favourable than the original contract and reflect the change that has been agreed.

However, employers do not have to accept requests. Requests may be rejected on one or more of the following grounds:

- The burden of additional costs.
- Detrimental effect on ability to meet customer demand.
- Detrimental impact on the recruitment of staff.
- Detrimental impact on other aspects of the employer’s business.
- Insufficiency of work during the periods the worker proposes to work.
- Planned structural changes.
- Such other grounds as specified in regulations.

If the worker’s contract is terminated during the one-month

decision period the employer is still required to respond to the request, however, additional grounds for rejecting the request will then be available (namely, that the worker has resigned or been dismissed for a qualifying reason).

Employers are not obliged to offer a right of appeal but may choose to do so (and if they do, there are limits on how the appeal process should be run).

What rights will a worker have if something goes wrong?

If an employer fails to follow the statutory procedure for considering requests, or it rejects a request based on incorrect facts, then the worker will have three months to present a complaint to an Employment Tribunal.

The Tribunal may order the employer to reconsider the application and/or pay compensation to the worker of an amount it considers to be just and equitable. The maximum amount of compensation may be capped in regulations – we would expect this to mirror the maximum compensation available under the flexible working regime (i.e. 8 weeks' pay).

Workers will also be protected from detriment and/or dismissal for having requested a predictable working pattern or bringing proceedings to enforce the right to make such a request.

What should employers do now?

Employers do not need to take action just yet. Although the

Act has passed into law, its provisions have not come into force straight away. The Government's press release indicates that the Act (and accompanying regulations) will come into force in Autumn 2024.

The draft Acas Code of Practice is due to be published shortly and will be subject to a public consultation. Once finalised, employers will be in a position to prepare policies setting out how such requests may be made and whether, for example, there will be a right of appeal. Employers will also need to devise processes for handling requests (noting the tight timetable for responding to them) and be ready to amend contracts where requests are accepted.

Although we think these preparations will be relatively straightforward, it is worth remembering that several other employment bills have recently passed into law and each will require employers to take preparatory steps over the next 18 months, namely the:

- **Carer's Leave Act 2023 – expected to take effect in April 2024. Read more** here**.**

- **Employment Relations (Flexible Working) Act 2023** – expected to take effect in July 2024. Read more here.

- **Worker Protection (Amendment of Equality Act 2010) Bill**

– expected to pass into law shortly and take effect in Autumn 2024. Read more here.

- **Protection from Redundancy (Pregnancy and Family Leave) Act 2023 – expected to take effect by January 2025. Read more here.**

- **Neonatal Care (Leave and Pay) Bill – expected to take effect in April 2025. Read more here.**

Workers (Predictable Terms and Conditions) Act 2023

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Menopause and disability discrimination: a tale of

caution when addressing the performance of an employee suffering from menopausal symptoms.

In the recent case of Lynskey v Direct Line Insurance Ltd, the Employment Tribunal decided that poor appraisal ratings, a written warning and ceasing enhanced sick pay were all discrimination arising from Ms Lynskey's disability of menopause.

What happened in this case?

Ms Lynskey began working for Direct Line as a motor sales consultant in 2016. In 2019, she began to experience menopausal symptoms, which included mood swings, poor concentration and memory loss. In March 2020, she was diagnosed with a hormone imbalance and depression and was prescribed antidepressants by her GP. Before the onset of these symptoms, Ms Lynskey had been model employee, well-liked and had received good performance ratings.

In June 2020, Ms Lynskey had a difficult phone call with a customer and concerns were raised about her conduct during this call. She went off sick with work-related stress for a period of two weeks and, during this period, she was offered a different role in the telematics team. As the new role did not involve direct sales, it was thought to be less stressful and more suitable for Ms Lynskey. She willingly agreed to the new role, and things started off well. She also came off her

antidepressants. However, two customer complaints were received, alleging that Ms Lynskey had been rude during calls. She received coaching but was also told that this should not happen again and, if it did, it could result in disciplinary action.

During Ms Lynskey's annual appraisal in 2020, she was graded as "needing improvement" for the first time. As a direct consequence of this rating, she did not receive a pay rise. There was no direct mention of her menopausal symptoms, but her manager noted that it seemed she was *"struggling to retain information".*

There were further difficult calls and in April 2021 her manager decided to sit in on some of her calls. Her manager then sought advice from HR who, without knowing about her menopausal symptoms, recommended disciplinary action be taken. During the disciplinary meeting, Ms Lynskey raised her menopausal symptoms as a mitigating factor, however, this was not accepted by Direct Line. As a result, Ms Lynskey received a 12-month written warning, together with a "success plan" (i.e. a performance improvement plan). Her mental health deteriorated following the written warning, but she continued to try to work.

In July 2021, Ms Lynskey went off sick due to stress at home. An Occupational Health report was obtained, which recommended that Ms Lynskey have a phased return to work and stated that it was "likely" that she was disabled under the Equality Act 2010. In addition, it was suggested that her targets be removed until her symptoms improved. During this period, Ms Lynskey received enhanced sick pay. She was entitled to receive this benefit for up to 26 weeks, however, Direct Line chose to withdraw it after only 13 weeks.

Upset by the outcome of the disciplinary and the decision to remove her enhanced sick pay, Ms Lynskey challenged these decisions by raising a grievance in November 2021. Her enhanced sick pay was reinstated, but the disciplinary warning was not reversed. She remained off sick. In May 2022, Ms Lynskey resigned as result of the above treatment and brought claims in the Employment Tribunal for constructive unfair dismissal, disability, age and sex discrimination.

What was decided?

Given the length of time that had passed between the events complained about and Ms Lynskey's resignation, the Tribunal rejected the claim of constructive dismissal. It also rejected the sex and age discrimination claims but found that there had been disability discrimination.

The Tribunal agreed that Ms Lynskey's menopausal symptoms amounted to a disability under the Equality Act 2010 as her symptoms had a significant impact on her day-to-day activities and her ability to perform at work. In particular, it concluded that Ms Lynskey was treated unfavourably because of something arising out of her disability in three instances, namely the appraisal rating, the written warning and the decision to withdraw the enhanced sick pay (even though this was eventually reversed).

Appraisal rating

As regards the appraisal rating, it was found that the rating did not take into account the fact that Ms Lynskey was performing at the best of her ability in light of her

symptoms. The Tribunal was also critical of the link between the appraisal rating and Ms Lynskey's pay award. It noted that *"need for improvement is inherently unfavourable if the person, through disability, cannot, in fact, improve, or meet the required standards"*. Whilst Direct Line identified high quality customer service as a legitimate aim, it failed to provide any evidence showing how linking pay awards to appraisal ratings achieved this aim. The Tribunal took into account Ms Lynskey's previously good appraisal ratings and the fact that she had informed Direct Line that she was struggling as a result of her menopausal symptoms.

Written warning

Turning to the written warning, the Tribunal applied the same analysis as above and explained that the disciplinary process and written warning were unfavourable treatment because of something arising in consequence of Ms Lynskey's disability. In addition to the substantive unfairness, both the disciplinary investigation and meeting had been conducted by Ms Lynskey's manager, falling foul of the Acas Code on Disciplinary and Grievance Procedures, and ignoring Direct Line's internal policies which stated that managers ought not to be involved. The manager also failed to consider Ms Lynskey's symptoms as mitigating factors when deciding on the appropriate sanction.

Withdrawal of enhanced sick pay

The Tribunal also concluded that the decision to withdraw Ms Lynskey's enhanced sick pay after 13 weeks was unfavourable treatment. This decision was made by her manager because it was considered that she was not doing enough to return to work

and withdrawing sick pay would force a return. This was despite the medical evidence available, and Ms Lynskey regularly engaging with her GP and occupational health.

Finally, the Tribunal decided that Direct Line ought to have referred Ms Lynskey to occupational health at the onset of her symptoms to ensure that she was supported and that reasonable adjustments were made at an early stage. Further, they had failed to make adjustments to the telematics role that would have helped her manage her symptoms.

The Employment Tribunal awarded Ms Lynskey compensation in the amount of £64,645. This included compensation for loss of earnings as well as an award for injury to feelings due to the impact of the loss of her job. Unusually, an aggravated damages award was made due to Direct Line's failure to concede Ms Lynskey's disability status earlier on in the Tribunal process – it was only during the final hearing that Direct Line conceded that it knew, or ought to have known, about her disability.

What does this mean for employers?

Employers are under a duty to make reasonable adjustments for disabled employees and to ensure that such employees are not subjected to unfavourable or less favourable treatment. This extends to all aspects of work, including performance. This case is a sobering reminder that it can be challenging to deal with performance issues which intersect with disability.

If performance issues arise where an employee is struggling with menopausal symptoms or other symptoms which could amount

to a disability, it is important to seek early legal advice to avoid any pitfalls. Remember to engage your occupational health services early on if appropriate and consider and implement the recommendations made in any occupational health report.

This decision also highlights the need for continued awareness around the menopause. Frequent training for managers is vital to ensure they are equipped to handle such matters and also to ensure that employees who are suffering with symptoms are treated fairly and supported.

Lynskey v Direct Line Insurance Ltd

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Employment relationship was terminated by mutual agreement despite employer

stating that the employee had been “dismissed”

In the recent case of Riley v Direct Line Insurance, the EAT held that an Employment Tribunal was entitled to reject an unfair dismissal claim on the basis that the termination of employment came about by the free mutual consent of both parties, despite the fact the employer’s termination letter referred to the “dismissal” of the employee.

What happened in this case?

Mr Riley was employed by Direct Line as a home claims advisor from March 2012. He was disabled by reason of Autism Spectrum Disorder (**ASD**), anxiety and depression. Between 2014 and 2017, Mr Riley was off work primarily due to anxiety and depression. Direct Line made a series of reasonable adjustments to facilitate his return to work. However, these were unsuccessful and, ultimately, a medical assessment indicated that he would never be able to return to work.

In August 2018, Direct Line proposed the option of ceasing employment while continuing to receive benefits under the company’s permanent health insurance (**PHI**) scheme. Mr Riley was happy with the proposal. On 19 September 2018 a final meeting took place to confirm the termination of the employment relationship. During the meeting, Mr Riley asked to have it put in writing that he was no longer employed. On 25 September 2018, Direct Line wrote to him, stating that he had been *dismissed* with effect from the 19 September 2018 on the grounds of capability due to ill health. As a result, Mr

Riley brought various Employment Tribunal claims , including for unfair dismissal and failure to make reasonable adjustments.

The Tribunal dismissed all of Mr Riley's claims. It found that he had not been dismissed but had proactively pursued the option of the PHI scheme and agreed to the termination of his employment to take advantage of it. He had understood the proposal and was not put under pressure to agree, nor tricked into doing so.

On the reasonable adjustments claim, the Tribunal found that Direct Line had failed to make two adjustments, namely, a failure to provide Mr Riley with noise cancelling headphones and a failure to roll out management training on awareness of Asperger's syndrome. However, because Mr Riley was unfit to work from 25 May 2018 , these adjustments would have made no difference to his ability to return to work. Therefore, any claim had to be brought within three months (less one day) of that date, unless it was just and equitable to grant an extension of time, which the Tribunal decided it was not. The fact that Mr Riley had changed his mind about the termination of his employment was not a good enough reason to extend time.

Mr Riley appealed to the EAT.

What was decided?

The EAT dismissed the appeal.

The EAT acknowledged that, on its face, the letter was

entirely consistent with a straightforward dismissal letter. However, the Tribunal had correctly considered the substance of the termination, rather than the terminology used in the letter. The decision that the termination was by mutual consent, and that Mr Riley understood the nature of it, was upheld. The EAT clarified that a consensual termination, agreed upon freely by both parties, does *not* constitute a dismissal.

In examining whether the Tribunal had erred in refusing to extend the time limit, the EAT also upheld the decision that Mr Riley's change of heart about the agreement to terminate his employment by mutual consent was not a ground for a just and equitable grounds extension of time.

What does this mean for employers?

This decision highlights that the terminology used in employment documents and agreements can have serious consequences. Here, the incorrect use of the term "dismissal" appears to have triggered the employee to launch Tribunal claims.

However, even where the wrong terminology is used, this decision demonstrates that Tribunals will look at the substance of the termination to assess whether it amounts to a dismissal or a consensual parting of the ways. Where both parties have freely agreed to end the employment relationship, the termination will not be regarded as a dismissal. In this case, the fact that Direct Line kept detailed records throughout the process was key to them successfully defending the claim. Therefore, confirming with an employee that they fully understand what they are agreeing to and documenting

everything in writing will help to prevent misunderstandings and potential disputes down the line.

Being careful of terminology and adopting a considerate approach when dealing with terminations, especially involving employees with disabilities, will mean employers are more likely to achieve legal compliance, reduce the risk of legal disputes, and maintain good employee relations in the process.

Riley v Direct Line Insurance Group Plc

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