

## Case Law

## Action Points

**Bullying** – Two important cases under the Protection from Harassment Act 1997 demonstrate the wide breadth of this Act and the extent to which employers can be vicariously liable for the acts of bullies - at great cost (£800,000 in one case).

*Majrowski v Guy's & St Thomas' NHS Trust [2006] UKHL 34, Green v DB Group Services (UK) Ltd [2006] EWHC 1898 (QB)*

Ensure grievance procedures are operating effectively. Consider use of confidential helplines. Consider introduction of a bullying policy. Watch out for bullying subcultures developing in particular departments.

**Whistleblowing** – the EAT limit protection to the making of protected disclosures and confirm that protection does not extend to acts to establish justification for the disclosure.

*Bolton School v Evans [2006] IRLR 500*

Consider adoption of a whistleblowing policy drawing a clear distinction between permissible acts of disclosure and impermissible related acts.

**Holiday Pay** – ECJ confirm that under the Working Time Directive the UK practice of allowing holidays to be carried over to a subsequent year is acceptable provided that no cash alternative is available, except on termination of employment.

*Federatie Nederlandse Vakbeweging v Staat der Nederlanden [2006] IRLR 561*

Check holidays cannot be 'sold back' on menu-based benefits packages below the statutory minimum level of 20 days.

**Discrimination** – Court of Appeal make clear that individual managers can be financially liable for the acts of others if they foster and encourage a discriminatory environment

*Gilbank v Miles [2006] IRLR 538*

Ensure managers are aware of the personal risks of allowing discriminatory behaviour to go unchecked.

**Taxation** – beware the perils of using self-employed workers. The Inland Revenue have successfully claimed tax and NI against an employer where both parties genuinely believed the worker to be self-employed and he had declared and paid tax on that basis.

*Demibourne Ltd v HM Revenue & Customs (SpC 486)*

Review arrangements of all self-employed staff. Obtain tax indemnities and written confirmation that the Revenue should repay any refund to the worker to the employer.

**Notice Pay** – If an employee is receiving statutory sick pay (SSP) during the notice period their entitlement to pay in lieu is limited to SSP provided that the contractual notice period exceeds the statutory minimum by at least one week.

*Langley v Burlo [2006] IRLR 461*

If only paying SSP during the notice period, check the length of notice to establish that there is no liability for full pay.

**Disability** – the Court of Appeal has said that disciplinary action against a disabled person will not be discriminatory unless the disability has affected the employers mind.

*Taylor v OCS Group Ltd [2006] IRLR 613*

When disciplining disabled people ensure that the necessary supports for a fair process are in place so that any decision is not tainted by the employee's disability.

## Legislation

**Unfair dismissal** – a recent revision to Section 98 Employment Rights Act 1996 means that a dismissal will not be unfair if the employer can show that the decision to dismiss would have been the same had a fair procedure been followed. Precise impact not yet clear.

Pending clarification through case law, do not assume dismissal will be unfair for breach of non-statutory procedural rules or principles.

**Age Discrimination** – a final checklist in preparation for the new legislation on 1st October 2006 will be contained in the next Refresher in mid-September.

Finalise all policies for 1st October 2006. Give notice to those retiring during the transitional period of six months.