

New Minimum Wage Rates Announced

The Government has announced increases in the national minimum wage rates in line with the recommendations of the Low Pay Commission. These will apply from October 2008.

The adult national minimum wage will rise from £5.52 to £5.73 an hour. The minimum rate for 18- to 21-year-olds will increase from £4.60 to £4.77 an hour and for 16- to 17-year-olds the rate will be £3.53 an hour instead of £3.40.



Employee Liable for Employer's Losses

Employees who breach their duty of good faith to their employer can be held to account for any resultant losses to the employer, even if the employee has not benefited personally from the breach.

A recent High Court case involved an insurance broker who backdated insurance cover notes, which allowed claims to be made by the firm's clients who would otherwise have been uninsured. Following an investigation by the insurance company involved, the firm that employed the broker accepted that backdated cover notes had been issued and reached a settlement with the insurer, which involved paying them compensation.

The firm dismissed the broker and sued him for its losses, which were the payment made to the insurance company plus the increase in the cost of its professional indemnity insurance and other costs which had arisen by virtue of the broker's breach of his duty of good faith.

The Court accepted that the accusations made against the broker were very serious and that the more serious these were, the higher the standard of proof had to be, especially in the absence of any evidence of any personal gain resulting from the backdating of the cover notes.

Despite the broker's excellent past track record, the judge ruled that the evidence was compelling that he had backdated the cover notes and that this had caused each of the losses for which his ex-employer claimed. Accordingly, he was liable for the losses.

If you find yourself in a similar position, contact **H&LF Employment partner, Simon Huggins** for advice.

Age Discrimination – Young Workers

The Employment Equality (Age) Regulations 2006 make direct and indirect age discrimination illegal in an employment context, unless the treatment can be objectively justified. The legislation applies to discrimination against young as well as older workers.

Recently, a woman who claimed that she was dismissed for being 'too young' won her claim of age discrimination (Wilkinson v Springwell Engineering Limited).

Leanne Wilkinson was 18 years old when she began working for Springwell Engineering Limited, in Newcastle upon Tyne, as an office administrator. She was dismissed without notice during a three-month probationary period and was asked to leave the premises immediately. Miss Wilkinson claimed that her employer told her that it needed an older, more experienced person to do the job. Springwell Engineering claimed that she was dismissed on grounds of capability.

The Employment Tribunal upheld Miss Wilkinson's claim. The company had relied on a 'stereotypical' assumption that capability equals experience and experience equals older age. There was also a lack of any 'orthodox procedures' when recruiting Miss Wilkinson and when her employment was terminated.

Miss Wilkinson was awarded £5,000 for injury to feelings, approximately £5,000 for loss of earnings and two weeks' pay because the company had failed to provide her with full written particulars of her employment. The award was increased by 50 per cent because the employer had failed to follow statutory procedures. In addition, the company was ordered to provide any prospective employers with a truthful reference stating that Miss Wilkinson's dismissal was due to a breach of the age discrimination regulations, not that she was dismissed on capability grounds.

Employers are reminded that employees do not have to have worked for a specified period before they are entitled to bring a claim for discrimination. Equal opportunities training should be given so that stereotypical views linking age with competence do not go unchecked, leaving you open to a claim.

Contact **Employment partner Simon Huggins** on any employment law matter.

Partnership Can be Prosecuted in its Own Name

A recent decision by the Court of Appeal has established that a partnership can be held liable in criminal proceedings as a separate entity from its individual partners. The individual partners' assets are protected unless complicity or negligence can be shown.

The case concerned W Stevenson & Sons, a partnership involved in fish auctions, which was convicted at Truro Crown Court on various counts under the Sea Fishing (Enforcement of Community Control Measures) Order 2000. W Stevenson & Sons, along with the eight partners, sought leave to appeal against the conviction and were refused.

In reaching its decision the Court of Appeal held that as business activities were conducted in the name of the partnership and the partnership had identifiable assets that were distinct from the personal assets of each partner, there was no reason why the partnership should not be treated for the purposes of criminal law as a separate entity from the individuals making it up.

Given that the 2000 Order draws a clear distinction between a partnership and an individual partner, the view of the Court was that partnerships can be liable as independent entities. It followed that, where a partnership alone was indicted, any fine imposed could only be levied against the assets of the partnership.

The Court further held that only the convicted party could seek leave to appeal and, since the individual partners were joined with the partnership in the appeal application, they were not defendants and therefore not entitled to appeal. The partnership had not shown any arguable ground for appealing against the conviction so the application was refused.

Says **Litigation partner Michael Legister**, "Whilst the decision meant that the partners' personal assets could not be confiscated, those of the partnership could. The decision could have wide implications for how partnerships hold their assets."



Contractor and Employer Need Certainty

Construction contracts usually provide for payments to be made in stages, with the amount payable being based on the amount of work certified as complete at the appropriate time. Where project milestones are not met, the contract will normally provide that extensions of time can be given, which can affect the amount of the payment to be made under an interim certificate of work done.

In a recent case, a contractor's work was behind schedule and the architect supervising the project issued a certificate of non-completion. A notice of intention to withhold payment was issued by the contractor's employer eight days before the relevant stage payment was due and three days later the reduced payment was made. The sum deducted was £61,000 and the payment made was £126,000. Three days after the payment was made (i.e. two days before the final date for payment of the stage payment) the architect issued a retrospective notice of extension, which would have made the appropriate deduction only £12,000. The contractor carrying out the work argued that the stage payment should be increased by £49,000 as a result. The contractor's employer paid the further £49,000, but only after the contractor had issued a default notice. The contractor considered this action to have brought the contract to an end as the employer had failed to pay the full sum, certified under the interim certificate of work done, by the due date.

The House of Lords was faced with the question of whether or not the retrospectively issued interim certificate had affected the employer's right to rely on the previously issued certificate of non-completion.

The Lords ruled that a distinction must be made between the factual basis for the payment and the legal basis. The fact that a subsequent event had changed the factual basis under which the deduction was made did not change the legal basis under which the employer made the payment. Unless the contract specifically stated otherwise, the employer was not required to make the further payment of £49,000 immediately once the architect had granted an extension of time. The contract anticipated that shortfalls would be picked up in later certificates. To decide otherwise would make both parties to the contract subject to an unacceptable amount of uncertainty since neither would be able to rely on a notice as a conclusive statement of the position.

Says **Litigation Executive Neil Carson**, "Construction contracts can present numerous and sometimes formidable issues as they progress. Both the contractor and employer need as much certainty as possible. We can assist in the negotiation of any construction contract and in the drafting of any special contractual terms which may be required."

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