ORTOLAN LEGAL LIMITED

Hello,

Welcome to the Ortolan Legal Newsletter

Date of Issue: July 2010

The virtual in-house solution… Ortolan Legal Limited

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Ortolan Legal Limited — all about us...

Ortolan Legal Limited is a radically different law firm which aims to provide pragmatic and commercially focused legal advice. Employing only experienced remotely based lawyers, overheads are kept to a minimum and pricing can be on a fixed, retainer, capped or hourly basis. We don't charge administrative costs, so clients can budget effectively. Dealing with ad hoc work or retainer work, we can assist where there is no in-house legal function and also provide holiday cover or supplement existing legal teams. Our work covers non-contentious company commercial and employment law, contracts, tendering, purchase, supply, distribution, franchising agreements and pre-litigation reviews. We also provide general 'Legal Health Checks' and a 'Legal Hotline' offering legal support for a set number of hours each month.

For more information please call Claudia Gerrard on 0844 561 1638.

Unfair dismissal: a previous incident may be taken into account.

The Employment Appeal Tribunal has decided that an employer can dismiss an employee for gross misconduct where there has been a similar previous incident, even where the employee was not previously given a formal warning about the misconduct.

In the case of London Borough of Brent v Fuller, an employee was warned that certain conduct was unacceptable in May of one year. In breach of this advice, the employee carried out similar but more serious conduct of the same nature in October of the same year. The Employment Appeal Tribunal overturned the Employment Tribunal's decision, in saying that the dismissal for gross misconduct was fair. The earlier incident was viewed as relevant background to the dismissal even though no formal warning was given.

Despite the decision of the Employment Appeal Tribunal, the case highlights that an employer should follow proper disciplinary proceedings and give verbal and written warnings, in order to avoid any implication that a dismissal for gross misconduct is unfair.

Consumer contracts: 'read and understood' declarations

The Financial Services Authority ('FSA') has issued a statement about a supplier's website terms and conditions. At the end of the agreement, the contract stated that the client had "received, read and understood" the agreement. The FSA considered that the term was unfair.

Under the Unfair Terms in Consumer Contracts Regulations 1999, a contract with a consumer or private individual must be plain and legible. In addition, a consumer must be given a reasonable opportunity to read the terms of the contract but will generally be bound by the terms of the contract they have entered into. However, the FSA decided that a general catch all clause, saying that a person has read and understood an agreement is ineffective, particularly if the person has not had an opportunity to ask questions about the contract.

The FSA statement means that firms can no longer rely on such a general statement and, instead, should provide clear warnings to consumers about the nature and effect of entering into an agreement. Otherwise, a potentially unfair clause could render the entire contract unenforceable.

Non-solicitation clauses: 12 months may be too long

A non-solicitation clause will either prevent an employee from entering into contracts with competitors or from poaching clients after termination of the employee's contract of employment. A recent High Court decision has confirmed general principles relevant to all such clauses.

In the case of Associated Foreign Exchange v International Foreign Exchange, the High court considered that 12 months was potentially too long for an enforceable non-solicitation clause. In reaching a decision, any court must weigh up the interests of an employer, in protecting their business, against the employee's right to seek suitable alternative employment.

Therefore, to be effective, a clause should be for a reasonable period of time, taking into account the nature of the employee's role, their seniority and their ability to poach clients. Another factor, though, which is often overlooked, is whether the restriction can be limited to a particular geographical area, as the courts are more likely to support such a clause.

Evening Seminar being held.....

Thursday 15th July 2010
The Oriental Club, London
17.00 - 19.30
Free to attend

If you are interested in attending, please click on the email link about and enquire to Claudia Gerrard

Compromise agreements: obtaining legal advice

A compromise agreement is used wherever an employer wants to protect itself from future claims by an employee, usually following dismissal. In order to be enforceable, the employee must have obtained independent legal advice on the proposed compromise terms.

A recent decision by a Scottish employment tribunal has decided, however, that such advice does not need to include whether the terms of the compromise agreement represent a good deal. The case involved mass compromise agreements entered into with Glasgow City Council and does, to a degree, turn on its own facts.

In particular, notwithstanding the decision, an independent legal advisor must still advise a client on the likely quantum of the claim and whether the compromise agreement provides adequate compensation. Failure to do so may entitle the client to bring a claim against the legal advisor for any inadequate compensation.

And finally.. Key cases in British law returns next month...

FEEDBACK FORUM
Your ideas are greatly appreciated...

We will be holding Breakfast Seminars throughout the year discussing a range of topical subjects. If you would like to attend a Breakfast Seminar or have an idea for future topics to be discussed or would like to simply talk to our team, please contact Claudia Gerrard by email or on 0844 561 1638.

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