E-Newsletter

October 2011

Ortolan Legal Ltd

Your latest commercial legal update from Ortolan Legal, the virtual in-house law firm

Hello. No newsletter last month due to our holidays here, but we are well and truly back to work now and have been for quite a while. This is always a busy time of year for our clients and that is reflected in our workload which continues to span a broad range of commercial legal issues for businesses large and small. The emphasis in our newsletter this month is on employment-related matters simply because there have been a number of interesting developments in this field recently. In future newsletters we will also be addressing a variety of other areas of corporate and commercial law which we hope will be of interest and relevant to our readers.

As always, we hope you enjoy reading our newsletter and please feel free to forward it on to anyone you know who might find it of interest.

Unfair Dismissal

Longer qualifying period planned

Two significant changes are proposed in respect of employment tribunals and the right to bring a claim for unfair dismissal. It has been confirmed that, from April 2012, the qualifying period for unfair dismissal will increase from the current one year's service to two years' service. The effect is that anyone with less than two years service will no longer bring a claim for unfair dismissal. The announcement comes shortly after the Ministry of Justice published statistics on employment tribunal cases. There was a decrease of 8% in the number of cases brought, compared to 2009/2010. However, the 218,000 cases received still represented a 44% increase on the number of cases brought, compared to 2008/2009. Claims for age discrimination, alone, increased by 32%. Many employers, therefore, will welcome longer qualifying period for claims of unfair dismissal. However, it is possible that dismissed employees with less than two years' service may bring other claims particularly, discrimination or whistle blowing, neither of which requires a minimum qualifying period.

Employment Tribunals

Consultation due to commence next month

The second proposed change relates to whether fees should be imposed on a claimant before they are allowed to bring an employment tribunal claim. Consultation is due to commence in November 2011.. Currently, the claimant, usually the employee, can commence an action without paying any fees. This has been criticised by employers, particularly in light of the reported increase in cases brought each year. It is proposed that from 2013, a fee of £150 - £250 is imposed on a claimant before they can bring an action in an employment tribunal. This figure could rise to £,1000 if the matter proceeds to a hearing. It is possible that higher fees will apply where the claimant is seeking £30,000 or more in compensation. This is another move likely to be welcomed by employers, who often face hefty legal bills when defending tribunal cases. It should be noted, though, that, where the claimant is "low paid" or unemployed, the fees might be waived altogether.

Bribery Act 2010

First prosecution reported

The Bribery Act 2010 came into force on 1 July of this year. The Act introduces strict liability on companies to prevent bribery by employees acting on its behalf, extending the crime to all private sector transactions, not just public transactions. It provides for a maximum prison sentence of 10 years for individuals and unlimited fines for companies. It was recently reported that an employee of Redbridge Magistrates' Court has become the first person to face prosecution under the Act. Munir Yakub Patel is due to appear

Facebookers

Employee unfairly dismissed for derogatory remarks

As previously reported, there have been a number of employment tribunal decisions concerning dismissal of employees for making remarks on Facebook and other social networking websites. As recently as May 2011, we reported on the case of Preece v JD Wetherspoons, where a dismissal was upheld after an employee made derogatory remarks on Facebook. The test applied by the tribunal was whether the comments brought the employer into disrepute. The same test was applied in the recent case of Whitham v Club 24 t/a Ventura. In that instance, the tribunal upheld a claim for unfair dismissal on the grounds that the comments made were minor and did not bring the company into disrepute. Although all cases will ultimately turn on their individual facts, both cases stress the need to ensure that adequate policies are in place, covering use of social networking, whether at work or at home. The policies should warn employees that they might face disciplinary action if they make derogatory remarks about staff, customers or the company. The cases also reiterate that full investigations should be carried out prior to any

before Southwark Crown Court on 14 October 2011. It is alleged that Mr Patel told an individual facing a motoring offence that he could influence the course of proceedings. It is further alleged that Mr Patel asked for and received the sum of £500 from that individual, purportedly in order to influence those proceedings. The case could prove significant for a number of reasons, not least the fact that Redbridge Magistrates Court, as Mr Patel's employer, is under a statutory duty to prevent bribery and must have "adequate procedures" in order to do so. The case, therefore, may provide guidance on what would constitute "adequate procedures", which may, in turn, be of use to many organisations.

About Ortolan Legal

Ortolan Legal is a radically different law firm providing pragmatic and commercially focussed legal advice. We are all experienced in-house lawyers, based remotely so overheads are kept to a minimum. Our pricing structure is entirely flexible; we will adopt your preferred structure and simply ask to earn a fair margin for our work. We don't charge administrative costs. 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 in-house 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.

If you require any advice in connection with the content of this bulletin, or on any other issues, please contact Claudia Gerrard on 0844 5611 638 or e-mail her at cgerrard@ortolangroup.com

decision to dismiss.