

30 March 2009

## earwiggin : employment law update

### LEGAL REPRESENTATION AT DISCIPLINARY HEARINGS

R (on the application of G) v The Governors of X School & Anor

Does an employee have a right to be accompanied by a lawyer to a disciplinary hearing? It was reasonably well established that the answer to this question was "no" unless the employer's disciplinary procedure specifically gave a right to legal representation. However, a decision reported last week has suggested that this might not always be the case.

Mr G was employed at a primary school as a music assistant. The school took disciplinary action against him after allegations of an inappropriate relationship with a child. Mr G's requests for legal representation at both his disciplinary and appeal hearings were refused. Mr G was dismissed for gross misconduct.

The High Court accepted G's argument that, due to the gravity of the allegations against him (which were likely to spell the end of a career in teaching if they were upheld), the European Convention of Human Rights meant that he was entitled to legal representation at his disciplinary hearing. It agreed that being accompanied by a trade union official or a colleague would not have been sufficient.

Although the court went out of its way to make clear that its decision related to the facts of the case and was not intended to have wider implications, this decision is likely to be cited by employees in the future if they are denied legal representation at internal hearings. We understand that the both parties have been given permission to appeal to the Court of Appeal so it is possible that the decision may be reversed in due course. In the meantime, employers would be well advised to proceed with caution before refusing requests for legal representation at internal disciplinary hearings.

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### FLEXIBLE WORKING REQUESTS

The statutory right to make a request for a flexible working pattern currently only applies to employees who have caring responsibilities for a child under 6 years of age (18 if the child is disabled) or for an adult dependant who is the employee's spouse, partner, relative or who is living at the same address as the employee.

Despite rumours that the proposal was going to be shelved, the Government has announced that the right to make a flexible working request will be extended to employees with caring responsibilities for children up to the age of 16.

Although the extension is due to take effect in April, the exact date has yet to be announced.

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### STATUTORY ANNUAL HOLIDAY ENTITLEMENT

Increase to take effect from 1 April 2009

A reminder that, from 1 April 2009, the minimum statutory holiday entitlement under the Working Time Regulations 1998 will increase to from 4.8 weeks to 5.6 weeks per year (the equivalent of 28 days per year for individuals who work 5 days per week).

If the employer's holiday year starts before 1 April 2009, the additional holiday entitlement should be calculated on a pro rata basis. For example, if the worker's holiday year runs

from 1 January to 31 December, the minimum entitlement for the year to 31 December 2009 will be 5.4 weeks (or 27 days for someone who works 5 days per week).

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## REPEAL OF STATUTORY DISPUTE RESOLUTION PROCEDURES Transitional Provisions

As we have previously reported, the statutory dismissal, disciplinary and grievance procedures will be replaced by the procedures contained in the new ACAS Code of Practice with effect from 6 April.

Does this mean that we can afford to forget all about the statutory procedures after the end of this week? Unfortunately not - transitional provisions apply if the dismissal procedure started before 6 April or if the grievance relates to events that occurred prior to 6 April.

In brief, the transitional provisions are:

- *Dismissals* - the old rules will continue to apply if the employer sent the step 1 letter or held the step 2 meeting before 6 April 2009;
- *Grievances* - the old rules will continue to apply if the employee's complaint is about events that occurred wholly before 6 April 2009. If the complaint is about events that started before 6 April 2009 but continued after that date, the old rules will continue to apply until 4 July 2009 (or until 4 October 2009 if the grievance relates to equal pay or redundancy payments).

The practical implication of the above is that an employer who is in the process of consulting over redundancies or who is contemplating dismissing an employee for other reasons (e.g. misconduct or poor performance) may wish to delay sending the step 1 letter until next week.

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## STATUTORY BENEFITS Increase in SSP, SMP, SPP and SAP

The annual increases to the various statutory benefits will take effect from 6 April. The new rates are shown in the table below:

Benefit	Current rate (to 6 April 09)	New rate (from 6 April 09)	Maximum Period
Statutory Sick Pay	£75.40	£79.15	28 weeks in any 3 year period
SMP (higher rate)	90% of normal weekly earnings	90% of normal weekly earnings	6 weeks
SMP (basic rate)	£117.18	£123.06	33 weeks
Statutory Adoption Pay	£117.18	£123.06	39 weeks
Statutory Paternity Pay	£117.18	£123.06	2 weeks

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