

27 August 2009

earwiggin : employment law update

WORKPLACE TRENDS

CBI Survey

The Confederation of British Industry has recently published a survey on work patterns in the recession. It is based on responses received from 704 organisations during April/May 2009. Although the results are not particularly surprising, some of them are quite interesting.

In summary, the survey shows that:-

- 55% of employers are planning a pay freeze for their next pay review;
- 61% have imposed a total or partial recruitment freeze;
- 90% have preserved or improved the value of their redundancy packages;
- The average cost of redundancy payments was £12,100 per employee;
- 62% have made or are planning changes to their working patterns to cut costs. The most popular methods were to increase the use of flexible working and to cut the use of agency staff and overtime;
- 24% of employers have reduced the average value of their bonus schemes. A further 10% have restructured their bonus schemes but maintained the average value.

The full report can be found at: [CBI Survey Report](#).

ACAS STATISTICS

Annual Report 2008/2009

ACAS has recently published its annual report for the year ending 31 March 2009.

The key findings of the report include:-

- there was a 29% increase in the number of unfair dismissal claims;
 - there was a 36% increase in the number of redundancy payment claims;
 - despite these increases, the total number of tribunal claims fell by 8%. This decrease is largely explained by the drop in equal pay claims (which make up a significant proportion of the total number of tribunal claims).
-

IMMIGRATION UPDATE

Changes to the points-based system

The UK Border Agency has published a number of amendments to the points-based immigration system and guidance. The most important changes to tier 2 applications are:

- the requirement that a migrant's salary must be paid in the UK has been removed;
- the requirement to advertise in JobCentre Plus, as part of the Resident Labour Market test, will not apply where the job is the role of director, chief executive or legal partner with a salary package of £130,000 or more;

- when a migrant's core duties and/or responsibilities change, or where their position in the hierarchy of the sponsoring organisation changes (e.g. due to a promotion), this is to be treated as a change of employment (requiring full change of employment action).

A full report of the changes can be found on the UK Border Agency's website at the following address: [UKBA Update](#).

EMPLOYMENT STATUS

Larner v Launahurst Limited

This is yet another decision on the thorny issue of employment status.

Mr Larner started working for Launahurst Limited as a window installer in 1995. For the first 9 years, there was no written agreement confirming the relationship between the parties. However, in December 2004, the parties entered into what was described as a "Contract Supply Agreement". This provided that there was no obligation on the company to provide Mr Larner with work nor any obligation on Mr Larner to accept work that was offered to him. It also gave him the right to appoint a substitute with the company's approval. He was paid on a fixed price basis for each job that he completed rather than by reference to the number of hours that he worked. He provided and used his own tools and he was responsible for correcting any defects in his work at his own expense and in his own time.

After the company dispensed with his services, Mr Larner brought a claim for unfair dismissal. The company argued that he was not entitled to do so because he was not an employee.

The employment tribunal found that the contract did not reflect the way in which the parties conducted themselves before or after it was signed and therefore that it did not truly reflect the intentions of the parties. When all the circumstances were looked at in the round, it was appropriate to conclude that Mr Larner was an employee. The company appealed against the decision but its appeal was dismissed by the EAT.

This case serves as a useful reminder (if a reminder was needed) that, when it comes to assessing an individual's employment status, the substance of the relationship is more important than the label applied by the parties. Having a contract which ticks all the right boxes is one thing but it will not necessarily avoid a finding of employment status if it does not reflect the reality of the situation.

earwiggin is a fortnightly bulletin produced by Wiggin's employment law team. It is intended to provide general guidance only and should not be relied upon as a source of definitive legal or other advice.

If you would like further information on anything reported above please contact [Marcus Rowland](#) (01242) 631224, [Anne-Marie Boyle](#) (01242) 631220 or [Chris Hammond](#) (01242) 631282.

If you want to be removed from the distribution list or wish to be added to it please send an email to this address: [employment](#)

For further information about what we do and who we are please visit our website: www.wiggin.co.uk