

REVIEW OF EMPLOYMENT LAW IN 2016

1. Introduction

This bulletin is the first of two looking at employment law developments in 2016 and 2017. This one reflects on developments in 2016 and EMP/109 will look forward to what can be expected in 2017.

2. Referendum

Since the referendum in June, there has been much speculation as to how employment rights will be affected by the decision to leave the EU. When we leave existing EU law will be made into British law so that the same rules and laws will continue to apply. However, that law can then be changed or removed, although Theresa May has said existing workers' rights will be guaranteed in law as long as she remains Prime Minister. So we may well not know what impact Brexit will have on employment rights for some time yet.

3. Delays

Brexit has, though, led to delays in the publication and implementation of new laws and the launching of consultations. Prior to the referendum announcements on grandparent leave and the publication of the government review of tribunal fees were on the agenda. Neither has been forthcoming. Progress has been made on gender pay reporting – see below.

4. Employment status

There was substantial press interest in the successful claims brought by Uber drivers about when a worker is a worker, and when he or she a self employed contractor with no employment rights – part of the so-called gig economy. The Uber case demonstrated that an individual's status is assessed on the basis of the reality of the relationship, and in particular the level of control extended over the individual operative, rather than what the contract documentation says. Similar cases will feature in 2017.

5. Holiday pay

Following developments in previous years there have been more cases about holiday pay, all leading in the same direction. However, what has not been decided by the courts is whether bonus payments should be reflected in holiday pay. The *Lock v British Gas* case did, though, confirm through a Court of Appeal judgement that contractual results based commission and non-guaranteed overtime must be included in holiday pay calculations of the first four weeks of annual leave.

6. Disability discrimination

It is now 20 years since disability discrimination was first outlawed and there have been a number of significant decisions in 2016. The *G4S Cash Solutions v Powell* decision shows that pay protection can be a

reasonable adjustment in certain circumstances, so reps will need to ensure employers think carefully about whether to protect a disabled employee's salary if they agree to move to a lower graded job.

In *Carreras v United First Partners Research* a disabled employee's reasonable adjustment request not to work late was successful because he was disadvantaged by the expectation that all employees would do so.

Therefore, when representing members, reps should ensure employers who are considering the question of reasonable adjustments take into account expectations about hours of work as well as formal core hours.

7. Dress Codes

This issue made headlines when an agency that supplied reception staff sent an agency worker home after she refused to wear high heels.

This was followed by a controversial decision by an Advocate General's (AG - adviser to the European Court of Justice) opinion in a Belgian case involving a Muslim woman who was banned from wearing her headscarf at work. The AG determined this was not religious discrimination provided the ban was founded on a policy of religious neutrality and did not distinguish between different religions and between religious and non-religious beliefs.

A different AG's opinion in a similar case from France followed shortly after, and the decisions are diametrically opposed.

Further Information

More information on this and other equality matters is available from:

- ❑ Val Stansfield, Employment Rights Adviser at stansfieldv@tssa.org.uk or 020 7529 8046

- ❑ the TSSA Helpdesk – 0800 328 2673

The information given here is for general guidance only and should not be regarded as a complete or authoritative statement of the law.