

The big freeze – points to consider



Heavy snowfall has closed schools and businesses and led to traffic chaos in many parts of the UK. We consider the employment law implications...

Whilst the onus is on employees to get into work regardless of the weather conditions, an employer should carefully consider each employee's circumstances and the terms of their contract before making a decision as to whether to pay them for time taken off work due to poor weather conditions.

If employees are unable to travel to work via their usual modes of transport, they should be encouraged to consider alternative means of safe transport.

Employers may wish to consider whether employees could work extra hours to make up their time at a later date, or work from home until the weather situation has improved. If these are not viable options, employers may advise employees that their time off work will be unpaid (although this could be considered to be a rather draconian approach that most employers would be reluctant to adopt). As an alternative, employees may be permitted to take the time off as annual leave in order to avoid the loss of a day's pay.

Employers should bear in mind the health and safety implications of requiring employees to travel to work in severe weather conditions. Employers may not

wish to put too much pressure on employees to travel to work when conditions are dangerous as this could potentially amount to a breach of the employer's duty of care towards their employees.

Employers are advised to adopt a balanced approach by encouraging employees to make all reasonable efforts to get to work in the snow, without putting too much pressure on them to travel when to do so could put them in danger.

If you require further advice or assistance in relation to this matter please contact Ruth Coffey on 01254 54374 or email ruth.coffey@forbessolicitors.co.uk

“Associative discrimination” covered by the Disability Discrimination Act

The Employment Appeal Tribunal (EAT) has ruled that the Disability Discrimination Act 1995 (DDA) is capable of being interpreted so as to protect individuals who suffer discrimination as a result of their association with a disabled person (EBR Attridge Law LLP and another v Coleman).

Miss Coleman was employed as a legal secretary by EBR Attridge Law LLP. Although Miss Coleman was not herself disabled, she was the primary carer for her severely disabled son. She alleged that she had been discriminated against by her employers by association with her son's disability.

Although the DDA did not on the face of it cover discrimination of this type, Miss Coleman argued that EU law prohibited

associative discrimination and the DDA should be interpreted in order to achieve consistency with EU law.

The EAT held that the DDA could be interpreted so as to apply to associative discrimination and words could be inserted to cover associative discrimination so long as they were “compatible with the underlying thrust of the legislation”. Although associative discrimination was not a part of the scope of the legislation when it was enacted, it was not repugnant to it; and indeed it conformed to the aim of the legislation; that discrimination on the grounds of disability remained central.

In order to give effect to its decision, the EAT inserted the following wording into the DDA: “A person...directly discriminates

against a person if he treats him less favourably than he treats or would treat another person by reason of the disability of another person”. A similar amendment was added to cover harassment.

The effect of the judgment is that employees may now bring claims alleging discrimination on the grounds of another person's disability. Whilst this potentially widens the scope for claims against employers, associative discrimination is limited to allegations of direct discrimination and harassment.

If you require further information or advice on this matter, please contact Jonathan Holden on 01254 54374 or email jonathan.holden@forbessolicitors.co.uk

A right to legal representation at disciplinary hearings?

The Court of Appeal recently handed down its decision in the case of R (G) v X School. It held that Article 6 of the European Convention on Human Rights (the Right to a fair trial) entitles an employee to legal representation at a disciplinary/appeal hearing if the hearing is determinative of his civil right to practise a profession.

G was a teaching assistant at X school. He was alleged to have had sexual contact with a 15 year old boy. The school governors conducted a disciplinary hearing, at which G was told that he was entitled to representation by a work colleague or trade union representative. Following the hearing, G was dismissed and the governors reported the dismissal to the Independent Safeguarding Authority (ISA) for a decision as to whether G should be placed on a “barred list” of those unsuitable to work with children. If placed

on the list, G would be prevented from practising his profession. G brought judicial review proceedings, challenging the governors' decision not to let him be accompanied by a solicitor at the disciplinary hearing and forthcoming appeal.

The High Court ruled that G should have been entitled to legal representation at the disciplinary hearing due to the severity of the penalty and the effect on G's future career. The governors appealed.

The Court of Appeal found that the right to practise a profession was a “civil right” for the purpose of Article 6. It was satisfied that the school's internal processes would have a profound influence on the ISA's decision, and that an ISA listing would have a severe impact upon G's ability to practise his profession. G was therefore entitled to

legal representation at the disciplinary and appeal hearings.

A similar decision was reached in relation to NHS doctors and dentists in the case of Kulkarni v Milton Keynes Hospital NHS Trust.

These cases could apply to other professions where a “barred list” or equivalent system operates. Employers in such sectors should review their disciplinary policies to ensure that legal representation is allowed in cases where an individual's right to practice their profession is at stake.

If you would like to discuss the impact of these decisions on your organisation, please contact Jonathan Holden on 01254 54374 or email jonathan.holden@forbessolicitors.co.uk

Climate change concerns capable of legal protection

The Employment Appeal Tribunal (EAT) has recently held that a belief in climate change is capable of qualifying as a philosophical belief for the purposes of the Employment Equality (Religion or Belief) Regulations 2003. These regulations protect workers from being discriminated against, victimised or harassed because of their religion or belief.

In the case of *Grainger Plc and Others v Nicholson*, the EAT held that there is no reason why genuine philosophical beliefs based on science or politics, as opposed to religion, should not be worthy of protection.

The ruling does not mean that anybody with strongly held views can bring tribunal claims alleging discrimination (although undoubtedly many will try). The EAT set out guidelines to help to determine whether a philosophical belief qualifies for protection under the regulations. In order to be protected, the belief must:

- Be genuinely held.
- Be a belief and not an opinion or viewpoint based on the information currently available.



- Be a belief as to a weighty and substantial aspect of human life and behaviour.
- Be able to attain a certain level of cogency, seriousness, cohesion and importance.
- Be worthy of respect in a democratic society, not incompatible with human dignity and not in conflict with the fundamental rights of others.

Furthermore, the belief must have a "similar status or cogency to a religious belief".

Despite the relatively stringent criteria that must be met in order to succeed at the tribunal, this case is undoubtedly of benefit to employees and a large number of claims based on assertions of belief are now anticipated. Employers who are faced with individuals asserting strong views should tread with caution as the levels of compensation awarded under the regulations could potentially be unlimited.

For information or advice in relation to any of the above, please contact Amy Crabtree on 01254 54374 or email amy.crabtree@forbessolicitors.co.uk

Enhanced rights for expectant fathers

On 6 April 2010 the Additional Paternity Leave Regulations 2010 will come into force. These regulations provide fathers with far greater rights than they currently enjoy - they are intended to provide parents with greater choice and flexibility in relation to their child's upbringing.

Currently, working fathers are entitled to take a maximum of 2 weeks consecutive leave in the first 56 days of a child's life. As a result of the new regulations, fathers will be entitled to take an additional period

of paternity leave of up to 26 weeks. The leave must be taken at least 20 weeks after the child is born and the child's mother must return to work before the paternity leave can begin. Fathers will have the right to return to work for up to 10 paid "keeping in touch days" during their paternity leave and they will be entitled to return to work on the same pay and conditions after their period of leave ends. Although the regulations come into force on 6 April 2010, they will only actually begin to apply to fathers of children due on

or after 3 April 2011. This may change depending upon the result of the forthcoming General Election as the Liberal Democrats have indicated that they will bring this date forward if they come into power. Until then, the current rules will continue to apply.

If you require advice or assistance in relation to paternity leave or any other employment matters, please contact Peter Byrne on 01254 54374 or email peter.byrne@forbessolicitors.co.uk

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Events

Key Legal Issues for Construction Businesses in 2010

23 February 2010, 8am
Clayton Park Conference Centre

The session will give practical guidance to construction companies on some of the key legal issues facing the sector at the current time. Topics will include false self employment in construction, agency workers, lay offs and redundancy, late payments, credit management, anti competitive practices and public sector procurement issues.

To reserve a place at this seminar please contact catherine.toon@regeneratepl.co.uk

Employing Foreign Workers

23 March 2010, 8am until 10am
The North and Western Lancashire Chamber of Commerce, 1/2 Lockheed Court, Amy Johnson Way, Blackpool. FY4 2RN

This practical seminar is an essential guide for all businesses that employ foreign workers. The programme will be confirmed shortly.

To reserve a place at this seminar please contact Helen Gorrell on 01254 222394 or email helen.gorrell@forbessolicitors.co.uk

Plan, Protect, Recover - A guide to late payments

25 March 2010, 8am until 10am
The North and Western Lancashire Chamber of Commerce, 1/2 Lockheed Court, Amy Johnson Way, Blackpool. FY4 2RN

This short breakfast seminar will identify ways to effectively deal with late payments and highlight any areas that may require attention. Topics covered will include planning for recovery, methods of recovering late payments and enforcement. The cost of the seminar is £10.00 + vat for NWLCC chamber members, £15.00 + vat for NWLCC affiliate members and £20.00+ vat for non-members.

To reserve a place at this seminar please contact Jess Morris at NWLCC on 01253 347063 or email jessm@lancschamber.co.uk or register at the website www.forbessolicitors.co.uk

Annual Employment Law Updates

Deepdale, PNE FC, Preston - 5th October. Stanley House Hotel, Mellor - 21st October
9am - 1.30pm

The experienced team will be covering all the latest UK and European employment law developments and the implications for your organisation.

A full programme is yet to be finalised but to register your interest early, please email ashleigh.harris@forbessolicitors.co.uk