



EMPLOYMENT LAW NEWSFLASH E BULLETIN

Returning from Maternity Leave

The Employment Appeal Tribunal has handed down a decision which for the first time deals with the meaning of the entitlement for an employee to return to "the job in which she was employed before her absence" on maternity leave.

The Claimant was employed as a teacher at a primary school, which rotated classes every two years. During her absence on maternity leave, this rotation took place as usual and when she returned she had been allocated a different class. The Claimant brought a claim on the basis that she did not return to the same job.

The EAT held that the role to which she returned was the same job, being that of a primary school teacher, having been employed as a primary school teacher prior to taking maternity leave.

However, the EAT decided that the school had failed to consult with her regarding the change, as it would have done had she not been absent, and had therefore subjected her to a detriment.

Statutory Paternity Leave

Further consideration has been given by the DTI to the issue of statutory paternity leave and pay, which is envisaged to be enacted in two years time.

It has been suggested that mothers could pass over some of the statutory leave and pay to fathers if mothers return to work during Ordinary or Additional Maternity Leave. Consultation on this issue continues.

Restrictive Covenants and Inducing Breach of Contract

The House of Lords has handed down a decision which will prove relevant to employers considering bringing proceedings against a former employee's new employer for the tort of inducing breach of contract, where the former employee is in breach of their restrictive covenants.

Often the old employer seeks to claim that the new employer has been responsible for the employee acting in breach. The decision has laid down the prerequisite that it must be shown that the alleged wrongdoer – ie the new employer – specifically intended to interfere with the contract.

Disclosure of Confidential Witness Statements

During the course of an internal investigation into a grievance or disciplinary action it is not unusual for employees to request that any statements they provide be treated as confidential and not disclosed to the employee in question.

The EAT has recently outlined the concerns over the disclosure of such information, given that parties are under an obligation to disclose **all** documents that are relevant to a case.

The EAT has stated that Tribunals should balance the public interest of taking confidential statements to gather information against the necessity to disclose the statement to ensure the fairness of any proceedings.

As such employers should refrain from giving any absolute guarantee that any statements taken will not be used at a later stage.

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