Welcome to Employment Matters: a round-up of the key UK employment law issues affecting your business and our recommendations for managing those issues.

If you have any questions about this update or would like to know more about how we can help you, please feel free to contact Christopher Hitchins at +44 (0) 207 776 7663 or Sarah Bull at +44 (0) 207 776 5222.

New EU Data Protection Laws—What Do You Need to Know?

The General Data Protection Regulation has been agreed in Brussels and will go into effect in 2018. The regulation replaces the Data Protection Directive 1995, with the intended effect of harmonising the patchwork implementation of the Directive across the European Union. Since it will be directly applicable in all EU member states, it will replace the United Kingdom's Data Protection Act 1998.

With the Regulation will come a host of both new and enhanced initiatives to protect the data of European citizens, requiring fundamental changes to company privacy policies and procedures. Just a small sample of the changes include: data controllers will be required to undergo data protection impact assessments, employee consent will be held to a more rigorous standard which can also be easily withdrawn and subject access requests will have a shorter deadline of one month rather than 40 days. Fines will also have a lot more bite, as they'll be based on a percentage of worldwide annual turnover, with the highest level being 4%. Data protection will be expected by design and by default.

In light of these changes for 2018, the Information Commissioner's Office have issued a helpful paper on 12 steps to take now, which can be accessed here.

What should employers do next?

Ascertain where the most changes will be required for your business, to give you plenty of time to plan for the changes ahead.

Shared Parental Leave Take-Up—Is Your Business Prepared for the Increase in Interest?

According to recent research by the Women's Business Council and employer support firm, My Family Care, just 1% of all male employees had taken shared parental leave since it was launched this time last year. However, of 1,000 individuals surveyed, 30% of the men who had children during that year and were eligible for the leave had taken advantage of the opportunity. In addition, 63% of men who already have young children, and are considering having more, would choose to take shared parental leave in future.

Concerns over career progression and finances were cited as some of the biggest barriers to more employees taking shared parental leave. The Department for Business, Innovation & Skills (BIS) has stated that they will evaluate the policy by 2018.

What should employers do next?

The increase in take up shows that businesses need to think through their approach to shared parental leave. Do you have a policy in place? Have you considered the pay issues related to shared parental leave? Is your HR department equipped to handle requests for information?

Restrictive Covenants in the Spotlight

Do you know what an agronomist is? Not many employment lawyers did until the case of *Bartholomews Agri Food v. Thornton* in which the High Court rejected the reasonableness of a restrictive covenant of an agronomist (a scientist specialising in producing and improving food crops) on various grounds.

Mr Thornton had worked for Bartholomews as an agronomist for close to 20 years and had begun his career there. Restrictive covenants that the employer sought to rely on when he left were entered into when he had joined as a trainee. It was held that the restrictive covenant was unenforceable at the time it was entered into, as it was manifestly inappropriate to impose a covenant that a trainee could not work for a competitor or be involved in supplying services of a similar nature to any of the company's customers for a period of 6 months. As it was unenforceable when agreed, it was unenforceable even when Mr Thornton was subsequently promoted, in accordance with previous case law on this point.

The Court went on to state that the covenant was drafted too widely in any case, as Mr Thornton only dealt with clients that contributed just 2% of the company's annual turnover. To stop him from engaging with any customers when he might not even have knowledge of them was not reasonable to protect Bartholomews' business.

Furthermore the covenant contained a term where Mr Thornton would be paid in full during the term of the restriction. The Court still ruled that the covenant was ineffective as it was contrary to public policy effectively to allow a restraint to be purchased.

What should employers do next?

This case confirms that it is good practice to regularly review and amend, where appropriate, restrictive covenants throughout an individual's employment—particularly upon promotion. When amending restrictive covenants, remember to bear in mind the need for fresh consideration.

Also of note, the Government has recently announced a 'call for evidence' on whether post-termination restrictions act as a barrier to employment, innovation and entrepreneurship, especially for small businesses and entrepreneurs. This could be a prelude to tougher regulation of non-compete and non-solicitation clauses in the UK, or their outright ban altogether. We will update you once this consultation is reported.

When Is a Staff Handbook Contractual?

The Court of Appeal recently held in *Department for Transport v. Sparks* that terms in a staff handbook on absence management had effectively been incorporated into employment contracts, and therefore could not be unilaterally changed. Normally employers try to ensure that their handbook policies are non-contractual, allowing them the flexibility to be able to change them at will and reducing the risk of breach of contract claims for a failure to follow their own policies.

In this case, the employment contracts stated, "It is the intention . . . that all of the provisions of the [Handbook] which apply to you and are apt for incorporation should be incorporated into your contract of employment."

The handbook in question was split into two parts, one of which was considered contractual and the other non-contractual, featuring guidance and good practice. The contractual clause in question stated that there was a 21-day absence for sick leave in any 12-month period trigger point, after which disciplinary action could be escalated. The Department had sought to reduce this to five days' absence or three occasions of absence in a 12-month period.

The Court of Appeal reviewed the case law in this area, and in viewing the employment documents as a whole, held that there was a "distinct flavour of contractual incorporation" and the relevant clause of the handbook therefore did form part of the employment contract.

What should employers do next?

It's important to be clear which terms, if any, in a staff handbook are contractual and which are not. It's worth noting that the Court was displeased that previous versions of the handbook weren't available (as previous versions had been overwritten electronically), so good practice would be to have each version recorded and stored.

For more information about these issues or if you would like to discuss an employment-related matter, please contact: Christopher Hitchins at +44 (0) 207 776 7663 or Sarah Bull at +44 (0) 207 776 5222.

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