



Hewitsons' Employment LEGAL UPDATE

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Employment Tribunal rules Addison Lee drivers are workers

In the case of *Lange, Olzeski & Morahan v Addison Lee Limited* the Employment Tribunal (ET) has ruled that a group of drivers for Addison Lee were workers, and were not self-employed contractors as Addison Lee claimed.

The Claimants worked for Addison Lee as drivers for its premium driving service. The contract which governed the working relationship stated that the Claimant's were self employed contractors. However, the drivers were subject to a great deal of control by Addison Lee. The drivers were subject to an induction, tested on their knowledge of London and attended the driving "Knowledge School". They were required to enter into a hire agreement for the vehicle that they would be using to provide the services, wear Addison Lee uniforms and keep their vehicles at a certain level of cleanliness. When undertaking work drivers were required to log on to a system in their vehicles and this system then allocated a pick up location to the driver. Sanctions were sometimes imposed if a pre-booked job was missed. Further, if a driver did not log onto the system for more than 3-4 days without any earlier notification, Addison Lee would contact the driver to find out why.

The Claimant's argued that their working arrangements, as detailed above, were such that they should be afforded worker status and that they were not self employed contractors. The drivers claimed that Addison Lee was using a self-employed sham to avoid its employer responsibilities. The ET agreed with the Claimant's and found that the drivers were workers. By logging onto the drivers system the drivers were undertaking to personally perform services for Addison Lee. Further, given the nature of the working arrangements, it could not be said that the drivers were in business on their own account and that Addison Lee was their client. The drivers were therefore workers.

As a result of the ruling, the drivers will be entitled to be paid the National Minimum Wage and to have paid holidays. There will be a further tribunal hearing to calculate the holiday and pay that the drivers should receive.

Employment Appeal Tribunal overturns ET's ruling that misconduct investigation was too thorough

In the case of *NHS 24 v Pillar* the Employment Appeal Tribunal has held that the ET was wrong to find that a misconduct dismissal was unfair for considering previous incidents that had not been treated as disciplinary issues.

Ms Pillar was employed by the NHS to take telephone calls from members of the public and ask questions which would allow her to triage them. She was dismissed for gross misconduct following a Patient Safety Incident ("PSI") where she referred a patient who had suffered a heart attack to an out-of-hours GP service instead of calling 999.

Ms Pillar had been responsible for two previous PSIs, which had been dealt with through training rather than as disciplinary issues. The two earlier incidents, however, were included in the investigation report prepared for Ms Pillar's disciplinary hearing, which ultimately led to her dismissal.

Following her dismissal Ms Pillar brought a claim of unfair dismissal, arguing that the investigating officer should not have included the earlier incidents as these incidents had not led to any form of disciplinary action. In the first instance the ET held that the inclusion of the two earlier incidents fell outside of a "reasonable investigation" and that therefore the decision to dismiss was unfair. The EAT overturned this ruling and held that the dismissal had been fair. The EAT held that an investigation could not be unreasonable for including too much information, unless it could be said that the earlier PSIs should never have been a factor in deciding to dismiss. This was not the case here, the earlier PSI's were relevant in all of the circumstances and so the dismissal was fair.

EAT upholds decision that employer pension contributions should be included in a week's pay

In the case of *University of Sunderland v Drossou* the EAT has upheld a decision by the ET that the calculation of a week's pay should include employer pension contributions.

Ms Drossou worked for the University of Sunderland. She was dismissed due to an irretrievable breakdown in working relationships and the ET found that she had been unfairly dismissed. In calculating the compensation due to Mrs Drossou, the EAT held that the calculation of a week's pay should include employer pension contributions. Prior to this decision, it has been a longstanding practice to exclude employer pension contributions from the calculation of a week's pay as they are paid into the pension fund, rather than paid directly to the employee. However the EAT found that, as the Employment Rights Act (ERA) does not state that the amount payable by the employer under the contract of employment has to be payable directly to the employee for it to be included in a week's pay, pension payments could be taken into account. Further, the definition of "remuneration" in the ERA means a reward in return for services. Pension payments are no less a reward for service than basic pay and so should be included in the weeks' pay calculation.

WHAT TO LOOK OUT FOR

Parental Bereavement leave

The Parental Bereavement (Pay and Leave) Bill has been published which makes provision for two weeks' paid leave for parents of a child who dies under the age of 18. There is currently no legal right to paid time off to grieve, although employers are expected to be understanding and flexible.

Mental Health – ACAS guidance

ACAS has issued new guidance on promoting mental health in the workplace.

The guidance discusses ways in which the workplace can have a negative effect on mental health. It includes advice on understanding mental health, improving mental health at work, tackling work-related causes of mental health and training both managers and staff to deal with mental health issues.

The full guidance can be found [here](#).

Employment Tribunal fee refund scheme

Following the Supreme Court's decision in July that the Employment Tribunal fees regime was unlawful, the first stage of the refund scheme has been launched.

Up to 1,000 people will be contacted individually to apply for a refund before the full scheme is opened to the public. Those who are successful will be paid interest of 0.5% which will be calculated from the date of the original fee payment up until the refund date. The government has said that the estimated cost of the tribunal fees refund including interest will be £33 million.

For more information on any of these issues please contact Nick Hall by [clicking here](#).



any individual matter with which you may be concerned.

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