



What's New

Agency Workers

In the recent case of *Matei v Brooknight Guarding Limited* the EAT held that a temporary worker was as an agency worker for the purposes of the Agency Worker Regulations due to the temporary nature of his assignment.

Mr Matei was employed as a security guard for the Brooknight Guarding Limited (BGL) on a 'zero hours' contract. His contract included a flexibility clause enabling the BGL to assign him to a different site, although he generally provided security services to Mitie Security Ltd at the Citi Group site in London. Mr Matei was dismissed after 21 months. Mr Matei claimed he was an agency worker and claimed therefore that after 12 weeks' service he was entitled to the same working conditions as other staff that worked at Mitie. The Employment Tribunal (ET) held that Mr Matei was an agency worker because he was used as a 'cover security guard' for Mitie under their supervision and direction. BGL appealed.

The EAT upheld the decision and found that the ET rightly reached the conclusion that Mr Matei was an agency worker. The definition of agency worker required a consideration of the contract, period of employment and the nature of the work supplied, which the ET adopted in reaching its conclusion. Given the temporary cover nature of Mr Matei's work, it was permissible for the ET to conclude that he was an agency worker.

Victimisation

The Employment Appeal Tribunal (EAT) in *Saad v Southampton University Hospitals NHS Trust* held that the primary question to be determined in victimisation cases is whether the employee acted honestly in giving the evidence or making the allegation.

The employee, Mr Saad, was a trainee cardiothoracic surgeon at Southampton University Hospitals NHS Trust. Issues were raised concerning Mr Saad's performance, to which he responded by raising a grievance against his programme director. Mr Saad's grievance related to a racist remark he alleged was made by his programme director, who he said had described

him as 'terrorist looking' and likened him to the 'doctors who carried out the terrorist attack on Glasgow airport in 2007'. His grievance was rejected and Mr Saad was removed from the training programme. Mr Saad issued proceedings in the Tribunal (ET) and for victimisation alleging that he was dismissed for raising a complaint of race discrimination.

The ET rejected the claim and concluded that whilst Mr Saad subjectively believed that the programme director had made the alleged terrorist comment, this belief was not reasonable. Therefore, the claim of victimisation failed as it was based on a false allegation made in bad faith. Mr Saad appealed.

The EAT held the test for victimisation was to consider, firstly, whether the evidence or allegation made was true or false; and secondly, if false, whether the allegation was made in bad faith. The EAT held that the ET had erred in its conclusion that the allegation was made in bad faith because the ET found that Mr Saad subjectively believed the alleged terrorist comment had been made. Therefore, Mr Saad must have made it honestly, and not in bad faith. The EAT therefore substituted a finding of victimisation.

Criminal Record Checks

In the case of *R (on the application of AR) v Chief Constable of Greater Manchester Police and another [2018]*, the Supreme Court held that the police had not acted unlawfully in disclosing in an enhanced criminal records certificate the fact that an individual had been tried and acquitted of rape.

AR, a qualified teacher, was charged with the rape of a 17-year-old woman while he was working as a taxi driver. A jury found him not guilty and he was acquitted. He applied for a number of teaching jobs, which required an enhanced criminal records certificate. The certificate issued by the DBS included the information about the rape charge and acquittal.

AR appealed against the inclusion of the information in the criminal records certificate under the police complaints procedure, but his appeal was unsuccessful. AR subsequently applied for another enhanced criminal records check, this time with a view to working as a private hire driver. The certificate contained the same information as the first. AR made a further appeal under the relevant internal procedures but again this was rejected. AR applied for judicial review.

AR complained that the inclusion of the information about the rape charge and acquittal in the certificate breached his right to privacy under Article 8 of the European Convention of Human Rights (ECHR). He also stated that by including this information he had been treated as if he were guilty of the crime, in breach of his right to the presumption of innocence under Article 6 ECHR.

The High Court, Court of Appeal and Supreme Court each held that the inclusion of this information did not breach AR's rights under the ECHR and that the correct balance between the need to protect vulnerable persons and AR's individual rights had been struck in these circumstances.

WHAT TO LOOK OUT FOR

The Women and Equalities Committee inquiry into the enforcement of the Equality Act 2010

The Women and Equalities Committee inquiry on 30 July 2018 concluded that widespread problems exist in relation to the enforcement of Equality Act 2010 (EA 10) rights. The Committee now aims to collect evidence on the enforcement of the EA 10 as a whole, and the effectiveness of the Equality and Human Rights Commission (EHRC) in its enforcement role. The Committee are inviting written submission by Friday 5 October 2018 on how the legislation can be simplified to make it easier for the public to understand and enforce their statutory rights. The Committee also wants to hear evidence on the effectiveness and accessibility of tribunals and other enforcement mechanisms and seeks suggestions on their improvements.

Campaign groups have launched the application for judicial review of the immigration exemption in the Data Protection Act 2018

Open Rights Group and EU citizens' group, the 3 million, have launched a legal challenge against the immigration exemption in the Data Protection Act 2018. The exemption removes certain data protection rights if that data is being used for the 'maintenance of effective immigration control'. The campaign groups claim that the exemption creates an imbalance between different people's data rights, which may prevent some from attaining the personal data necessary to appeal immigration status decisions. The exemption will prevent individual from gaining the information they need to appeal government decisions in relation to immigration status.

For more information on any of the items mentioned in this update please contact Nick Hall on 01604 463375 or [click here](#) to email Nick.



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