



## What's New

### Notice – an Unambiguous Act of Resignation?

In the recent case of *East Kent Hospitals University NHS Foundation Trust v Levy* [2018], the Employment Appeal Tribunal (EAT) held that a letter from an employee giving one month's notice should not automatically be interpreted as a letter of resignation in the particular circumstances.

Ms Levy was employed as an administrator in the records department of one of the NHS Trust's hospitals. She received a conditional offer to transfer to a role in the radiology department. The next day, she gave her manager a letter that stated "Please accept one month's notice from the above date". Her manager responded on the same day, stating that he accepted her resignation, noting her last day in the records department and wishing her success with her future employment.

The following week, Ms Levy was told that the conditional offer for the role in the radiology department had been withdrawn due to her absence record. Upon being informed of this Ms Levy sought to withdraw her resignation from her records role, but was told that such withdrawal would be at her manager's discretion. Ms Levy's line manager would not accept the withdrawal of the resignation and completed a staff termination form without delay.

Ms Levy brought a claim for unfair dismissal. The Trust argued that Ms Levy had not been dismissed, but that she had resigned.

The Tribunal in the first instance decided that Ms Levy's letter was unclear; that it failed to identify whether notice was being given in respect of her previous role, but that she intended to transfer to the new department, or whether notice was simply to terminate her employment with the Trust. Even if the words had been clear and unambiguous, the Tribunal held that there were special circumstances in this case which meant the words had to be construed in light of the context of the case.

The Trust appealed and the EAT rejected the appeal. Whilst giving notice usually clearly relates to the termination of employment, in these circumstances the NHS Trust had reasonably understood Ms Levy's notice to relate to her transfer to the radiology department only and not the termination of

her employment. Ms Levy's manager had not treated her letter as if it was a resignation from employment with the Trust. His reply referred to the end of her work with the department (not the Trust) and he did not complete the staff termination form or deal with matters such as overtaken holiday until after he decided her resignation could not be withdrawn. Therefore on the facts the EAT held that the Tribunal was right to find that the Ms Levy had not resigned and Trust had dismissed her when it treated her notice as a valid resignation.

### **Establishing Disability**

In the recent case of *Mutombo-Mpania v Angard Staffing Solutions Ltd* [2018], the EAT ruled that in disability discrimination cases an individual could not prove they are disabled without giving evidence about their impairment and its impact on their normal day-to-day activities.

Mr Mutombo-Mpania worked for Angard Staffing Solutions (Angard) who provided casual staff to Royal Mail. Mr Muntombo-Mpania did not disclose any disabilities on his application form, during the recruitment process or on his occupational health form. However, he later informed Angard that he suffered with Essential Hypertension and stated that as a result he was unable to undertake regular night shifts.

Despite medication, Mr Mutombo-Mpania suffered from headaches, fatigue, breathing difficulties and lack of confidence. After failing to attend work on a number of occasions because of these symptoms, Mr Mutombo-Mpania was dismissed by Angard.

Mr Muntombo-Mpania issued a number of claims in the Employment Tribunal, including claims for disability discrimination.

The EAT held that the Claimant had not proved that he was disabled. Whilst he had given evidence of his symptoms and sought to link them with night shift duties, he had not provided any information about how his condition affected his ability to undertake various activities, or why those activities were affected during the night shift only. The Claimant did not therefore provide sufficient evidence to satisfy the Tribunal that he was disabled for the purposes of the Equality Act 2010.

The EAT therefore dismissed his appeal.

## **WHAT TO LOOK OUT FOR**

### **New ACAS Guidance on Employment References**

ACAS have released new guidance on employment references, which covers matters such as whether or not a reference must be provided, what a reference can include and whether an employer can give a bad reference.

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

### **Tribunal Statistics**

The Ministry of Justice has published the quarterly tribunal statistics from April to June 2018. During this period the number of claims received in comparison with the same period in 2017 has increased by 165%.

The statistics also show that it was successful disability discrimination claims that had the largest average award (£30,700) and the average award for unfair dismissal claims during the period from April to June this year was £15,007.

Also interesting to note are the results of the Employment Tribunal fee refund scheme, which was introduced following the abolition of the fees in July 2017. From the scheme's launch in October 2017 to 30 June 2018, there were 12,400 refunds made, with a total monetary value of over £10.6 million.

The full report can be accessed [here](#).

## Parental Bereavement

The Parental Bereavement (Leave and Pay) Act 2018 received the royal stamp of approval this month.

The Act provides all employed parents with a day-one right to take two weeks leave if they lose a child under the age of 18, or suffer a stillbirth from 24 weeks of pregnancy. Employed parents will also be able to claim statutory parental bereavement pay for this period, if they meet the relevant eligibility criteria, which are similar to the eligibility criteria for statutory paternity pay.

The full details of how these rights will apply will be included within the regulations which have not yet been published. However, it is expected that the new rights will come into force in 2020.

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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