Today’s speakers

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What we will cover today

Diversity, inclusion and wellbeing
- Why employers should be focusing on this
- Expected developments
- Three key cases

Other news
- Two key cases
- Covid vaccination and the workplace
- Budget implications
- Uber
Diversity, inclusion and wellbeing
Equality is high on the agenda

- Ethnicity pay reporting
- Sexual harassment
- NDAs
- Extended redundancy protection
- Flexible working
- Neonatal leave
Developments we are expecting

Ethnicity pay reporting
- Similar to mandatory gender pay reporting
- Debate around categorisation
- ONS research – gap in London 23.8%

Measures to tackle sexual harassment
- Mandatory duty, with financial penalties?
- Extension to time limit for discrimination claims?

Restricting the use of NDAs
- Employment contracts and settlement agreements
Other examples

Extended redundancy protection for women and new parents

• From point of notification of pregnancy
• To six months after maternity leave ends

Flexible working by default

• For all employment contracts
• CIPD campaign (1 February 2021)
Poll

How is your organisation approaching the issue of ethnicity pay reporting?

- We already report on this on a voluntary basis: (22) 8%
- We are preparing to report on a voluntary basis: (66) 25%
- We have no plans to report unless are legally required: (172) 66%
What should employers be doing now?

• Be proactive
• Speak to employees about how they feel and how you can help them
• Check managers are demonstrating behaviours you expect
• Review your policies
Three key cases on equality
When does grief become a disability?

- *Igweike v TSB Bank plc* (August 2019)
  - Claimant suffered fatigue, pain and guilt following father’s death
  - Not given discretionary bonus
  - Claim for disability and race discrimination, plus unlawful deductions
  - Medical evidence did not suggest symptoms were likely to last 12 months
  - EAT = **Not** a disability
    - Grief reaction not in and of itself a mental impairment
    - An ordinary human reaction
    - But may lead to mental impairment, such as depression
Practical implications

• Support bereaved employees as much as possible
• Do not make assumptions or trivialise
• Long term grief may lead to physical or mental impairment
• But do not need a clinically recognised condition
“Stale” equality and diversity training

- **Allay (UK) Ltd v Gehlen** (February 2021)
  - Mr Gehlen of Indian origin
  - Subjected to racial comments by colleague, Mr P
  - Employer ran ‘reasonable steps’ defence
    - Managers did nothing, having received training several years before
  - Claim for harassment related to race upheld by ET
  - EAT = Dismissed appeal
    - ‘Reasonable steps’ defence failed
    - ET correct to conclude training was stale and no longer effective
Practical implications

• Review and refresh equality training regularly
• Ensure managers trained annually
• Ensure training is high quality and effective
  • Content and delivery
  • Monitor outcomes – is it making a difference?
• Remember training unlikely to be sufficient on its own
  • Also implement and enforce harassment policy
Poll

How often does your organisation **review and refresh** its equality training?

- More than once a year: (6) 2%
- Every year: (73) 27%
- Every 2 to 5 years: (65) 24%
- I don’t know when it was last reviewed: (126) 47%
Balancing the books a legitimate aim

- *Heskett v Secretary of State for Justice* (November 2020)
  - Public sector pay freeze led to changes to employer’s pay progression policy
    - Period of service needed to reach top pay scale rose from 7 to 23 years
    - Stop-gap measure
  - Claim for indirect age discrimination rejected by ET and EAT
  - Court of Appeal = Dismissed appeal
    - The need to reduce staff costs due to budgetary constraints imposed by Treasury is a legitimate aim
    - Policy was a proportionate means of achieving that aim
Practical implications

• Discrimination cannot be justified if solely to save costs
• ‘Costs plus’ rule still applies – look for the ‘plus factor’
• The need to balance the books can be part of legitimate aim
• Then need to consider proportionality
• Realistic view taken by courts
• Reassuring for public sector employers in particular
Other news
Key health and safety protections extend to workers

• *R (IWU) v Secretary of State for Work and Pensions* (November 2020)
  • Section 44 ERA 1996
    • Provides protection from ‘detriment’ in health and safety context
  • IWU’s members (gig-economy workers) raised Covid-19 issues
    • Lack of PPE
    • Failure to implement social distancing
    • Failure to package samples correctly to protect medical couriers etc.
  • High Court = s.44 extends to workers, as well as employees
Practical implications

- Employers exposed to more Covid health and safety claims
- Front line workers
  - Entitled to be provided with necessary PPE
  - Able to take steps to protect themselves
- Part of recent trend of legislation being extended to workers (e.g. TUPE)
- What about post-Brexit?
Focus on interim relief

• What is it?
• In what jurisdictions is it available?
• What does Claimant need to prove?
• What could change and why?
• *Steer v Stormsure Limited* (December 2020)
Practical implications

• Be aware of risk of a dismissal qualifying for interim relief
• Have systems in place to respond rapidly
• Document trail important
Covid vaccination and the workplace

• All over the age of 50 to be vaccinated by end April
• Current Covid-secure/social distancing rules to remain in place (for now)
• Limited evidence so far of effect on transmission
• National vaccination passport unlikely
• In current climate, limited scope to make vaccination “compulsory” in workplace
• But employers do have a role (and interest) in encouraging take-up
Key budget announcements

• Coronavirus Job Retention Scheme extended to 30 September:
  • New payroll cut-off date from 1 May 2021
  • Employer contributions from July 2021
• SSP rebate scheme continued for SMEs
• Incentives to create traineeships and recruit apprentices
And finally…

- *Uber* ruling from the Supreme Court
- In that context:
  - Increased union activism
  - New IR35 rules in private sector
  - Long-standing plans for levelling the labour market playing field
Immigration Update Webinar

Thursday 25 March
10:00 - 11:00

mills-reeve.com/events/immigration-update
Any other questions?
Thank you

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Useful links

- CIPD MCR Programme of activities
- CIPD MCR Website
- CIPD MCR Showcase page
- CIPD Coronavirus hub
- CIPD Careers Hub
- E: manchester@cipdbranch.co.uk