

## Employment Newsletter July 2021

### COVID-19

Under the Coronavirus Job Retention Scheme (CJRS) employers will be required to make a 10% contribution to furlough pay from 1 July 2021, increasing to 20% for August and September 2021 with the CJRS scheme ending on 30 September 2021. Current government guidance that employees should work from home where they can is expected to remain in place until 19 July 2021.

**The Presidents of the Employment Tribunals** in England and Wales and in Scotland have published a "road map" for employment tribunal proceedings in 2021/22, setting out arrangements for the listing of new cases. With the backlog of cases still a major concern remote hearings will be here to stay. A virtual region has also been launched which will operate across all of England and Wales providing the flexibility needed for judges, members and staff to come together to hear cases via the Cloud Video Platform generated across the regions. It is hoped that the new region will be initially be used to help process the outstanding case load.

### Employment Tribunal Cases

We have started to see cases relating to the first lockdown in March 2020. In *Deimantas Kubilius v Kent Foods Ltd: 3201960/2020* it was held that an employer had not unfairly dismissal an employee who refused to wear a face mask when visiting a client's site. Crucially the employer had clear policies in place, and they could demonstrate that they had followed a fair and reasonable disciplinary process.

In *Mr D Rodgers v Leeds Laser Cutting Ltd: 1803829/2020* an employee was held not to have been automatically unfairly dismissed for refusing to return to work during the first lockdown. The tribunal highlighted the large workspace, the small number of employees and the adequate social distancing. In addition, the company had documented the measures implemented to reduce the risk of Covid-19 transmission in the workplace.

Finally in *Gibson v Lothian Leisure ET/4105009/2020* it was held that an employee had been unfairly dismissed under section 100(1)(e) of the ERA 1996 for raising health and safety issues about lack of PPE or other workplace COVID-secure measures, out of concern for his clinically vulnerable father.



**The Employment Appeal Tribunal** held that an employee was automatically unfairly dismissed under section 100(1)(a) of the Employment Rights Act 1996 (ERA 1996) where his dismissal resulted from "upset and friction" caused by the way in which he implemented a new safety procedure. Interestingly, legislation came into force from 31 May 2021 which extends the rights under section 44(1)(d) and (e) of the ERA 1996 not to be subjected to a detriment in certain health and safety cases to workers. ACAS guidance *Working safely during coronavirus (COVID-19)* has been updated to state that, from 31 May 2021, workers will have protection from experiencing any detriment if they reasonably believe being at work or doing certain tasks would put them in serious and imminent danger.

### Right to work checks

The Home Office first announced that the temporary COVID-19 adjusted right to work check measures will end on 16 May 2021, and then extended the temporary measures to 31 August 2021. The temporary changes, in place since 30 March 2020, have allowed right to work checks to be carried out over video calls and for job applicants and existing workers to send scanned documents or a photo of their documents to employers via email or a mobile app, rather than sending the originals.

**The Commission on Race and Ethnic Disparities** published its first report, making a number of recommendations to address ethnic and racial disparities and inequalities. Surprisingly, the report rejected the anticipated introduction of mandatory ethnic pay gap reporting in favour of voluntary reporting. The report has been widely criticised for downplaying institutional racism in the UK.

**If you have any queries regarding this communication or need employment advice please contact a member of the Employment Team on [employment@rowberrymorris.co.uk](mailto:employment@rowberrymorris.co.uk) or by telephone on 0118 951 6621.**

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