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Date for the Diary: Thursday 26th October 2017

Edinburgh Drinks & Networking Event

Snakes, ladders and sliding doors – driving your own career

Strategies for career progression, effectiveness and wellbeing at work. Offering a practical tour of the latest thinking around developing careers, Coretta talks about what we can do to maximise potential.



18:00 to 21:00

The Refinery,

St Andrews Square







TRIBUNAL FEES

HOLIDAY PAY



Where are we now?

- All workers in the U.K. entitled to 4 weeks' annual leave under EU Law ('Euro Leave') and an extra 1.6 weeks' annual leave ('UK Leave').
- Workers historically paid only 'basic pay' for all holidays.
- However, the combined result of holiday pay litigation is that workers should now receive 'normal pay' in respect of their Euro Leave.



□ Dudley Metropolitan Borough Council v Willetts and others EAT/0334/16

EAT rules that holiday pay **should** include entirely voluntary overtime.



□Lock v British Gas Trading Ltd

Performance related commission must be included when calculating holiday pay.

DISCRIMINATION



Religious discrimination

□ Achbita v G4S Secure Solutions NV

A company rule prohibiting the wearing of visible signs of political, philosophical or religious belief is <u>not directly discriminatory</u>.

■Bougnaoui and anor v Micropole SA

An employer's reliance on a customer's objections to being served by an employee wearing an Islamic headscarf as a reason for dismissal <u>is discriminatory treatment.</u>



Disability discrimination

■Donelin v Liberata UK Ltd

Failure to make reasonable adjustments - Constructive knowledge of the disability.

□Gallop v Newport City Council

When should knowledge of disability be imputed to the employer to establish direct disability discrimination?



☐G4S Cash Solutions (UK) Ltd v Powell

Is ring-fencing pay a 'reasonable adjustment'?



Indirect Discrimination

Essop v Home Office; Naem v Secretary of State for Justice

■To succeed with an indirect discrimination claim, is it necessary to establish the reason for the particular disadvantage?



Burden of proof

☐ Efobi v Royal Mail Group

Does the ball start in the Claimant's court?



EMPLOYMENT STATUS



Gig Economy

- □Aslam v Uber BV
- □ Dewhurst v CitySprint UK Ltd

What is the **reality** of the entire working relationship?



'Worker' status

□ Pimlico Plumbers Ltd & Anor v Smith

Self-employed plumber: entitled to 'worker' rights.

DISMISSAL



Wrongful dismissal

■Adesokan v Sainsbury's Supermarkets Ltd

Can gross negligence constitute gross misconduct?



□O'Brien v Bolton St Catherine's Academy

Long-term sick leave dismissal – when is it fair?



SUSPENSION



Suspension

□ Agoreyo v London Borough of Lambeth

When is suspension a breach of trust and confidence?

WHISTLEBLOWING



Whistleblowing

□ Chesterton Global Ltd & Anor v Nurmohamed

When is a protected disclosure 'in the public interest'?

EQUAL PAY



Equal pay for equal value

☐ Brierley and others v Asda Stores Ltd

Largest ever equal pay claim against a private sector employer expected this year.



LEGISLATION UPDATE



- ☐ Gender Pay Gap
- ☐ Tax Update
- □ Brexit



GENDER PAY GAP



Gender Pay Gap Reporting

 Gender pay reporting legislation requires employers with <u>250 or more employees</u> to publish statutory calculations every year showing how large the pay gap is between their male and female employees.

• The rules apply to:

- o Any private or voluntary sector employer with more than 250 employees
- o Employees ordinarily working in the UK
- o Contract governed by UK employment law



Key Dates

- <u>5 April 2017</u>: First 'snapshot' date gender pay gap calculations are based on relevant employees' pay during the pay period within which this snapshot date falls each year.
- <u>6 April 2017</u>: Regulations come into force.
- <u>4 April 2018</u>: Last date for publication of gender pay gap report following 2017 'snapshot'.

U.

TAXATION



IR35 'intermediaries legislation' system

□ From 6 April 2017 – **employers/agencies** responsible for ensuring intermediaries pay the correct tax.

□ Changes apply to thousands of workers who supply their services on a self-employed basis to public-sector employers.



□ Changes to the taxation of termination payments

□ Apprenticeship levy

☐ Tax-free childcare scheme

BREXIT



- ☐ Article 50 triggered 29 March 2017
- ☐ Great Repeal Bill

What does this mean for employment law in the UK?





FUTURE LEGISLATION



Future legislation

- Tribunal fees
- Taylor Review
- Immigration Bill
- Pay gap reporting race
- E-balloting
- Grandparental leave

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Keep the Tribunal Onside

- What kind of person becomes an Employment Judge?
- Create the path of least resistance.
- Reduce your case to one sentence.
- It's complicated...
- 1000 facts means 1000 findings.



SIBLING SQUABBLES

Don't pick unnecessary fights.



Equipped for Success

- You need the right material to prove your story.
- Witnesses who can speak from their *own* knowledge about the issues.
- Contemporaneous documentation is your next best tool.



DISMANTLING THE OTHER SIDE'S CASE



Exposing Contradictions

- Evidence contradicts a contemporaneous written record;
- 2. Evidence contradicts other evidence by the same witness;
- 3. Evidence contradicts evidence by another witness; or
- 4. Evidence contradicts common sense.



SETTLEMENT STRATEGY

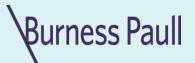


Sophisticated Settlement

- The first myth.
- The second myth.
- The right questions in the right order:
 - Can we afford to lose this case?
 - Can we afford to win this case?
 - What are the prospects of success?



IN PREPARATION LIES SUCCESS



Preparing for Tribunal

- Your statement is your friend...
- Advantages to preparation:
 - The story is straight long before it's subject to challenge;
 - Opportunity to think things through results in clear and logical evidence;
 - No surprises on the day from documents;
 - The evidence is yours and yours alone; and
 - Areas of concern are identified and addressed pre-hearing.



GIVING EVIDENCE



Giving Evidence: The Golden Rule

- Tell the truth
- Tell the truth
- Tell the truth
- No really, tell the truth.



Giving Evidence: Common Issues

- The infinitesimal possibility
- Filling memory gaps
- Creating memory gaps
- Mea culpa



Giving Evidence: Common Issues

- Hypothetical Scenarios become reality.
- Opening up the closed question.
- Passing the memory test.
- Do. Not. Fence.
- The cracked record.

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REMINDER.....

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