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Welcome

On 1st May Ellisons Solicitors merged with PTL solicitors and we are delighted to welcome both PTL staff and their clients to our larger, stronger merged firm! As a result of the merger we now have an increased presence in the Tendring Peninsular as we now have an office at Clacton on Sea to add to our Head Office at Colchester and our other offices at Frinton on Sea and Dovercourt.

According to a recent survey, some office keyboards harbour more harmful bacteria than a toilet seat. Tests were carried out in one office and out of 33 keyboards, four were a potential health hazard and one had more germs than one of the office's toilet seats. The latter was considered to be so dangerous that the microbiologist carrying out the test ordered its removal and quarantine. What's more surprising is that the survey wasn't commissioned by a manufacturer of keyboard cleaner, but was carried out by *Which* magazine at one of its own offices. Quite why a toilet seat always seems to be the benchmark in surveys of this nature is unclear - the results are presumably going to depend on how clean the toilet seat is - but let's not spoil the story.

So, on the cheery note that even office work is a high risk (and now presumably requires specialist safety equipment), it seems appropriate to start this month's bulletin with a health and safety case:-

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Health and Safety and Discrimination

In the case of *Stevenson v JM Skinner* the Employment Appeal Tribunal (EAT) confirmed that an employer's failure to carry out a risk assessment of a pregnant employee can amount to sex discrimination. However, it decided that where an assessment is carried out, there is no requirement for it to be confirmed in writing to the employee. The EAT found that the employer had complied with the regulations by way of holding meetings with the pregnant employee at which assessments were made and agreements reached on relevant risks. The meetings were recorded in writing and that was considered to have satisfied the requirements.

Ill-Health Early Retirement

The Pensions Ombudsman has upheld a complaint brought against the trustees of the Royal Bank of Scotland Staff Pension Scheme. Miss Murray complained the trustees had wrongly refused her ill-health retirement. The Ombudsman found that the medical practitioner the trustees appointed was not an appropriate person, did not understand the relevant pension scheme rule and that ill-health retirement had been wrongly refused. The trustees had accepted without question the medical practitioner's opinion which, on the face of it, had not been compiled on the correct basis. Further, they had failed to request certification from an appropriately appointed or approved medical practitioner at the right time or in the right terms. The case highlights the risks of taking expert medical reports at face value.

Contractor or Employee? The Illegality Test

In disputes regarding the status of workers (self-employed / employed), the argument that the worker is prevented from bringing a claim on the basis that an illegal contract was entered into crops up regularly. In *Enfield Technical Services Limited v Payne*, the Court of Appeal has held that the contracts of two employees who had previously been treated as self-employed were not illegal (and therefore they could bring claims as employees). The employees had actively participated in the labelling of their status as self-employed in the contracts and had benefited from the subsequent tax advantages. However, this did not prevent them from subsequently claiming the advantages of being employed. Indeed, this will be the case unless there is some sort of misrepresentation of the underlying facts to HM Revenue and Customs.

Grievance Complaints

It is anticipated that the Employment Tribunal rules regarding grievance complaints and disciplinary proceedings will change in the next year. Until they do, the cases relating to them keep coming thick and fast. The latest in a long line is *Bottomley v Wakefield District Housing* in which the EAT confirmed that the definition of what actually amounts to the raising of a grievance complaint (thereby entitling the complainant to make a claim in the Employment Tribunal), is very wide.

In this case, a number of employees brought equal pay claims after the housing function in which they worked was transferred to a private sector provider. Before bringing the claims in the Employment Tribunal they raised grievance complaints against the Council and sent copies to their new private sector employer. The new employer argued that in simply copying it in on the complaints (rather than addressing it to them), the employees had not raised a valid grievance. The EAT held that the employees had satisfied the requirements and could therefore bring their claims.

Intimidation of Litigants

Last month there were two cases in quick succession which dealt with the issue of intimidation of Claimants at the tribunal. In one case the former employer had its defence struck out for threatening the Claimant in the Employment Tribunal car park. It was therefore prevented from defending the claim made against it by the Claimant.

The second case involved a Respondent who threatened a Claimant outside the lifts at the Southampton Employment Tribunal. The former employer used, what was described as, unpleasant and threatening language. Interestingly the Employment Tribunal in the first instance held that such threats could not give rise to a claim of victimisation because they were too closely connected to the hearing itself and judicial proceedings immunity applied. This decision was overturned by the EAT which found that threats outside of the lifts at an Employment Tribunal could not form part of the proceedings.

Age Related Benefits - Discrimination

An Employment Tribunal has made an important decision regarding the provision of age related benefits and how they interact with the Age Discrimination legislation. In *Swann v GHL Insurance Services UK Limited* staff had been provided with a fund with which to purchase items from a flexible benefits package. This included an option to join a private health insurance scheme, the premiums of which were calculated according to age and gender. Being more disadvantageous to older members, the scheme was, on the face of it, discriminatory. However, the Tribunal decided that the employer had satisfied the defence of 'justification' in that it had

made all reasonable efforts to offer its employees a benefits package that was as advantageous as possible to all staff. The tribunal found that the benefits package would be likely to have the desired beneficial effect on recruitment and retention of staff, claimed as justification by the employer.

And Finally...

Having begun this bulletin with Health & Safety news and given the recent merger of the Health and Safety Commission with the Health & Safety Executive (come on – hands up those who can honestly say they knew there were two separate organisations), we finish with an appropriate employment story from Russia. A Russian factory worker in a town north of Moscow passed out at work following a drunken argument with a colleague. He awoke the next morning and was sent home by his employer because he was still drunk. He caught the bus home and went to bed. His wife woke him the next day and pointed out that he had a six inch blade stuck between his shoulders. It transpired that he had been stabbed during the argument with his colleague. Having survived only because no vital organs were hit by the blade he was, nevertheless, indifferent about the events and commented: "We got drunk together. Things happen when you drink".

ABOUT ELLISONS

Ellisons Employment Law Team provide a comprehensive employment service and can advise on:-

- Contracts of Employment
- Director Service Agreements
- Restraint of Trade and Non Solicitation
- Disciplinary/Grievance procedures
- Redundancy
- Unfair Dismissal
- Maternity and Paternity rights
- Parental Rights
- Discrimination Policies and Codes of Practice
- Discrimination claims
- Breach of Contract
- Transfer of a Business (TUPE)

This list is not exhaustive.

We also offer workshops and seminars for large or small groups which can be tailored to your specific business needs. For further information or advice contact Jayne Scott on Jayne.Scott@Ellisonslegal.com.

OTHER SERVICES

- Wills and Probate
- Matrimonial and Family Matters
- Licensing
- Civil Litigation
- Personal Injury
- Trusts
- Tax Planning
- Conveyancing
- Commercial Property

- Corporate / Commercial Law

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- Kingsway, Dovercourt, Harwich, CO12 3JU
- 143 Connaught Avenue, Frinton on Sea, CO13 9AB

FURTHER INFORMATION

For further information about Ellisons, please visit our website www.ellisonslegal.com.

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