

Workers' Rights when faced with forced changes to Contracts of Employment



The Employment team at Unionline Scotland recently obtained a successful judgement and £10,792 compensation for a GMB Scotland member on the 11th of June 2019.

It was the case of *Ms H Smith v Elinor Wade and Kenneth Wade case no ET4101508/2019*.

The member had been off on long term sick and at a back to work meeting the member was advised that she was to be demoted on her return to work and suffer a wage reduction of 8%. The member quite rightly understood that her old job which she had been employed

to do since 2008, had been taken away from her. The member felt she had been unfairly treated. UnionLine Scotland submitted a variety of complaints to the Glasgow Employment Tribunal on her behalf including unfair dismissal and or failure to pay a redundancy payment. The Employer's defence was in essence that the member had "misunderstood" the content of the back to work meeting and that no such changes were being imposed. The Employer submitted that there had been no dismissal of the member and that the member was still an employee.

The Employment Judge found that there had been an express dismissal of the member and moreover that the member was unfairly dismissed.

The Judge accepted submissions based on the important legal principals as set out in the case of *Hogg v Dover College 1988 ICR 39* that the effect of the back to work meeting was to terminate the member's contract of employment. An employer cannot simply

hold a pistol to somebody's head and say "henceforth you are to be employed on wholly different terms..." The Tribunal also accepted the further submissions in line with the principals in the case of *Alcan Extrusion v Yates [1996] IRLR 327* that very substantial departures from an original contract of employment can amount to termination of that contract and its replacement by the offer of a different and inferior contract.

This case reiterates the principal that workers are not left without any rights or the ability to amount a legal challenge when an Employer makes unilateral changes to a worker's contract of employment without their consent. In this case the Judge found that the old contract was being withdrawn from the member.

The member was delighted with the outcome and thankful that she had the foresight to contact the UnionLine legal advice line. The member was impressed with the helpful advice and assistance from the team at UnionLine Scotland.

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UK Government publishes flurry of new employment measures

July has been a busy month on the employment law front. Over the last few weeks, the UK government has announced a number of proposed changes to employment law, from changes to confidentiality clauses to a possible overhaul of family-friendly legislation. Below, is a short summary of the various consultations/responses to keep you fully up-to-date with employment law developments.

Consultation: Sexual Harassment in the Workplace

This consultation on sexual harassment in the workplace is designed to help the government understand whether the current laws are operating effectively. It invites views on:

- Whether there should be a mandatory duty on employers to protect employees from harassment
- Whether employers should be required to publish or report on any prevention and resolution policies publicly, with board sign off, to ensure that companies are engaging with this problem at an appropriate senior level
- How best to strengthen and clarify the laws in relation to third-party harassment
- Whether volunteers and interns should have the same protection against discrimination, harassment and victimisation as others in the workplace
- Whether the time limit for bringing discrimination, harassment or victimisation claims should be extended, e.g. to six months.

The consultation closes on 2 October 2019.

Response to consultation: changes to confidentiality clauses

The government has issued its response to its consultation on proposals to prevent misuse of confidentiality clauses in situations of workplace harassment or discrimination. It now intends to:

- Legislate to ensure that a confidentiality clause (whether in an employment contract or a settlement agreement) cannot prevent an individual from making disclosures to the police, regulated health and care professionals or legal professionals

- Legislate to ensure that the limits of a confidentiality clause are clearly explained in a settlement agreement or written statement of particulars
- Legislate to ensure that individuals receive advice not only on the nature of the confidentiality requirement, but also on the limitations of confidentiality clauses
- Produce guidance on drafting requirements for confidentiality clauses
- Introduce new enforcement measures for confidentiality clauses that do not comply with the legal requirements.

We do not yet have draft legislation or details of when the changes will be implemented.

Response to consultation: new parents to get enhanced redundancy protections

The government is taking forward its proposals to give new parents greater protection in a redundancy situation. Key changes include:

- Extending the redundancy protection period to six months once a new mother has returned to work
- Giving parents returning from adoption leave and shared parental leave similar protection

There are no details yet as to when these changes will be implemented.

Consultation: Proposals to support families

This consultation aims to explore “high-level” options for reforming family leave and pay arrangements to ensure they support employees to balance work and other commitments and responsibilities. The consultation document contains the following three key strands:

- **Parental leave and pay entitlements** – The consultation document invites views on reforming paternity leave, maternity leave, shared parental leave and parental leave, including whether employers would be in favour of more radical change and an overhaul of the current model for leave and pay – potentially moving to a single “family” set of leave entitlements. This part of the consultation closes on 29th November 2019.
- **Neonatal leave and pay** – Proposals for a new leave and pay entitlement (“Neonatal Leave and Pay”) for parents of babies that require neonatal care after birth. Eligible parents would receive one week of Neonatal Leave and Pay for every week their baby is in neonatal care, up to a maximum number of weeks. This part of the consultation closes on 11 October 2019.
- **Transparency** – Whether large employers (those with 250 or more employees) should be required to publish their family-related leave and pay and flexible working policies, and whether employers should have a duty to consider if a job can be done flexibly and make that clear when advertising a role.

This part of the consultation closes on 11 October 2019.

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