



WHISKERS
SOLICITORS &
NOTARIES

expired disciplinary warnings

The case of Airbus UK Ltd. v Webb has illustrated that employers cannot place reliance on a disciplinary warning that has expired, either in disciplinary proceedings or to justify dismissal.

The Employment Appeal Tribunal (EAT) ruled that a Tribunal is 'obliged, and not merely entitled, to ignore expired warnings'.

Three weeks after an earlier twelve-month final written warning had expired, Mr Webb and four colleagues were caught in the locker area, watching television, when they should have been working. All five were found guilty of gross misconduct but only Mr Webb was dismissed.

The other four employees received final warnings because they had no prior disciplinary record.

Mr Webb brought a claim for unfair dismissal. The Employment Tribunal (ET) took into account the decision of the Scottish Court of Session in *Diosynth Ltd. v Thomson* in which the Court had ruled that the employee was entitled to assume that a similar warning meant what it said and that it would cease to have any effect after one year. The ET held that as Mr Webb would not have been dismissed had he not been given a previous warning, it followed that his dismissal was unfair.



Airbus appealed against the ET's decision and lost. However, the EAT

confessed to having some difficulty in deciding whether or not the ET is obliged to ignore past warnings that have expired, but judged on balance that it is.

The EAT went on to suggest that although the ACAS Code of Practice on Disciplinary and Grievance Procedures suggests that final warnings should normally expire after 12 months, this need not always be the case. A longer time limit might be appropriate if the nature of the misconduct justifies it.

We can advise you how to ensure that the time limits for disciplinary warnings fit the particular circumstances and that your policies and procedures allow you to issue an extended warning where this is deemed necessary.

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overworked van driver wins damages

A company with a long-hours culture has been found liable for an accident which left an employee paralysed.

Michael Eyres was driving a van back to Bradford after a 19-hour working day with his boss. The accident occurred on the M1 when Mr Eyres braked suddenly and lost control of the van. He was thrown out of the vehicle and as a result of his injuries was left tetraplegic.

Mr Eyres claimed that his employer was liable in negligence and/or for statutory breach of duty for

permitting him to drive after working excessively long hours without a proper break.

The Court of Appeal judged that on the balance of probabilities the accident had been caused by Mr Eyres momentarily falling asleep after being expected to work for so many hours.

The company was found to be negligent because it did nothing to protect him from injury.

Employers who insist on employees working long hours without a break may well put them at increased risk and could find themselves held liable for any resulting stress or injury.

in brief

increase in holiday entitlement



The Government has announced that it will increase the minimum annual holiday entitlement from 20 days a year to 28 days. This will be accomplished in two stages, being increased to 24 days from October 2007 and to 28 days from April 2009. For further information, see: www.dti.gov.uk/employment/holidays/index.html

additional paternity leave consultation

The Government has published a consultation paper on the administration of the extension of

Additional Paternity Leave and pay. This will enable working fathers to take up to 26 weeks' Additional Paternity Leave, some of which can be paid if the mother of the child has returned to work.

This new provision will be available during the second six months of the child's life.

The consultation can be found at: www.dti.gov.uk/consultations/page39405.html.

national minimum wage – new guidance on accommodation offset

The Government has issued new guidance on the national minimum wage accommodation offset. This includes examples of different wage calculations, depending on a variety of scenarios, explains how to treat absences from work and contains a section on Frequently Asked Questions.

It can be downloaded at: www.dti.gov.uk/files/file38769.pdf.

disabled employees and long-term sick pay

The Court of Appeal has ruled that a sick pay policy that did not provide unlimited full pay for a disabled employee, who was off work for long periods with stress and depression, was not discriminatory under the Disability Discrimination Act 1995 (DDA).

The employee claimed that failing to pay her full salary during her absence was a failure to make a reasonable adjustment under the DDA and was unjustified disability-related discrimination because it meant that she experienced financial hardship, which placed her under additional pressure and worsened her depression.

The Court of Appeal judged that it would be wholly invidious for an employer to have to decide whether to increase payments to sick employees by assessing the level of stress caused by lack of money – stress which would no doubt be felt equally by a non-disabled person off work for a similar period.

Employers will not be guilty of unlawful discrimination for applying their standard sick pay policy to disabled employees who are absent on account of their disability.

Contact us if you would like advice on any discrimination issue.