

This week in Employment Law

High Court rules agency staff cannot be used to cover strikes (again)

Employers can no longer use agency staff to fill in for striking workers during industrial action after the High Court ruled that legislation introduced in 2022, by the then Business Secretary, Kwasi Kwarteng, is unlawful.

- In July 2022, the government swiftly implemented a new law which removed the long-standing position that agencies were not allowed to send temporary agency workers to work in an end user organisation to cover for their usual workers who were on strike.
- However, following an application for judicial review by trade unions, the High Court has now held that the government did act unlawfully when they changed this law and the 2022 law has now been quashed.
- The judge warned the government that any attempt to change strike laws in future would need to be subject to a rigorous consultation.
- This High Court decision has reversed the position so that the long-standing law has now been restored. It is therefore once again illegal for temporary workers to replace striking workers.
- All businesses affected by strikes will now have no option but to contend with worker-less days and agencies will have to ensure that they are fully aware of this latest sudden change as they will be breaking the law if they provide temporary workers to replace striking workers.

New Bullying and Respect at Work Bill

The Bullying and Respect at Work Bill, which was introduced to Parliament last week, would provide for a statutory definition of bullying at work and enable employees to make a standalone claim for bullying in the employment tribunal. It would also provide for a new Respect at Work Code to set minimum standards for positive and respectful working environments. Although the Bill is a long way from becoming law.

Did you know?

Currently, employers can be liable for bullying where it breaches the implied contractual term of trust and confidence leading to a breach of contract or constructive dismissal claim.

Europe heatwave causing holiday cancellation requests

With extreme temperatures hitting many overseas holiday destinations, there are reports that some employees are requesting to cancel their pre-booked holidays to avoid the heat. Employers don't have to allow employees to cancel their annual leave if they don't want to; in this case the employee would still take the leave. But, reaching agreement with the employee where possible, will help to maintain good employee relations.

Did you know?

If employers decide they can't agree to a holiday cancellation request due to business reasons, i.e. they have already arranged cover that can't be changed, they should inform the employee accordingly.

Motivation is key in discrimination cases

A pregnant employee who was dismissed for poor performance alleged during her tribunal claim that her line manager had influenced the owner of the business, who dismissed her, by making disparaging comments about the pregnancy. The tribunal found the dismissal was unfair but did not make a finding as to whether the decision maker had indeed been influenced by anyone else.

Did you know?

On appeal, the case was remitted back to the tribunal to determine who took the decision to dismiss, and if they were motivated by the protected characteristic when doing so.