D&W I EMPLOYMENT VOX

Transcript of Podcast

August 2007

Hello and welcome to this month's D&W Employment Vox, our regular podcast designed to update you on news and developments in the field of employment law.

My name is Alasdair Anderson and in this D&W Vox, prepared by our employment team, we take a look at a selection of news highlights

- **Dyslexic policeman wins disability claim**
- **Employee loses stress at work case**
- **And text messages sent at work – can an employer be liable?**

But first, a dyslexic chief inspector claimed the Metropolitan Police failed to make reasonable adjustments to help him pass his promotion exams to become a Superintendent. After 15 years of being in the force and working his way through the ranks, Mr Paterson discovered that he was dyslexic. During this time he had managed to write reports and handle what would be widely be seen as a complex and demanding job. After Mr Paterson failed the written promotion exams he argued that the Met had failed to make reasonable adjustments, arguing that his dyslexia amounted to a disability. The issue focussed on the definition of disability. Under the DDA a person is disabled if they suffer from an impairment which has a substantial and long term effect on their ability to carry out normal day to day activities. The crux of the issue was whether the promotion exam amounted to a normal day to day activity. The Employment Appeal Tribunal said that it did. Just because Mr Paterson did not attend the promotion board on a daily basis did not mean that the activity was excluded from being a normal day to day activity.

It can sometimes be difficult for employers to accept that a condition such as dyslexia can be hidden for many years. However it is not uncommon for this situation to arise – especially if an employee's role changes. The risks for an employer in failing to appreciate this can be substantial. Each request for reasonable adjustments should be carefully considered by making a comparison between what an employee can do, with what they would be able to do - without the impairment.

And stress at work is back in the news. We recently reported that a trend was emerging where employee stress claims were receiving a greater degree of judicial sympathy. But of course employment law never stands still for long. The recent case of Deadman against Bristol City Council once again shows how difficult it is for employees to succeed in this type of claim.

In Deadman the employee argued that his employers were responsible for the stress he suffered after they mishandled a complaint which was made against him. After 30 years service a female employee alleged that Mr Deadman had sexually harassed her, and the Council started a formal investigation. Mr Deadman then raised a grievance about the way the investigation was handled. The grievance was upheld because the Council had failed to follow their own harassment procedure, which said that the investigatory panel should be made up of 3 people - when in actual fact with his complaint they had only used 2. However the Council then went on to tell him that the case against him may be re-opened. Following this reply Mr Deadman developed a depressive condition and sued the council, arguing that they were responsible for his stress related condition.

Fortunately for the Council, in this case the Court of Appeal decided that the Council were not responsible for Mr Deadman's condition - despite their breach of their procedures. From an

employer's perspective this case once again limits the scope of stress related claims.

And text message harassment? A saleswoman in a mobile phone shop was recently awarded £4,000 compensation after she was sent sexually explicit text messages by her boss. A Birmingham tribunal recently heard how Lisa Jones's manager started by sending her suggestive text messages which eventually became more explicit. She was so offended by their content that she resigned and complained that she had been sexually harassed. Interestingly neither the manager in question nor the company appeared at the tribunal hearing. The chairman agreed that the conduct amounted to sexual harassment and awarded £4,000 in compensation. It may come as a surprise to some employers that they can be liable for text messages sent between staff. Although there are steps that an employer can take to minimise the risks. Adopting a robust harassment policy, communicating it to staff, and enforcing it are all key strategies in preventing a claim for harassment. And as this case highlights, developments in technology mean that harassment policies need to move with the times to cover all forms of contact in this digital age we live in.

And that's the D&W Employment Vox News for August 2007.

Each month the employment team take an in depth review of a practical issue in their written bulletin.

And if you want to find out how to access our bulletin or find out more about any of the issues covered in this D&W Vox please contact **Valerie Dougan** on **0207 240 2401**. Details on how to subscribe to our written bulletins can be found on our website at www.dundas-wilson.com. Each D&W Employment Vox will also be archived on the website in case you want to listen again or tell a colleague about us. Our website also contains information on future events and seminars.

And that's all for this D&W Vox.

This Vox is correct to the best of our knowledge and belief at the time of going to press on 17th August 2007. It is meant to be a general guide so it is recommended that specific professional advice is sought before any action is taken.

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If you would like any further information on any of these cases or news items, or any other Employment issue, please call the person at D&W with whom you normally liaise, or one of the following specialists:

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