

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:

- **Excessive workload and workplace stress**
- **Managing conflict at work – do you mediate?**
- **Preparing to compete – when does entrepreneurial activity become unlawful?**
- **From astronauts to lawyers the perils of the workplace relationship**

And first workplace stress where the courts seem to be more receptive to claims from employees. The High Court recently awarded £64,000 to an employee who was so overworked that she had a nervous breakdown. Tina Hiles had been employed for 10 years as a health visitor with South Gloucestershire NHS Trust before her workload became so unmanageable that she became unwell. To establish employer liability an employee has to prove that it was reasonably foreseeable that they would suffer an injury. The High Court explained that Mrs Hiles repeated complaints about workload and the fact that she burst into tears at a meeting, was enough to put the Trust on notice that she was more vulnerable to workplace stress. Once on notice that Ms Hiles was not coping, the Trust's failure to adequately address her excessive workload was sufficient to establish liability.

This is definitely a move away from the high hurdles the House of Lords previously established in the seminal stress at work case, **Sutherland v Hatton**. A further departure from the strict interpretation in Hatton can be seen in the recent case of **Intel Corporation UK Ltd v Daw**. The Court of Appeal distinguished Hatton by holding that the mere existence of a workplace counselling service does not automatically discharge the employer's duty of care towards an employee who suffers from stress. In Hatton the House of Lords said that this type of service would go a long way to discharging an employer's duty. Individual managers must take reasonable steps to respond to workplace concerns, especially if their employees demonstrate signs that they are not coping.

The recently published CIPD's bi-annual survey on Conflict at Work highlights the benefits of workplace mediation, an issue which the D&W employment team are championing, with two members of the team trained as mediators. Unsurprisingly the survey shows that the statutory dispute procedures have not achieved their aim of reducing tribunal claims. One of the unfortunate consequences of the statutory procedures is the formalisation of grievances, making early intervention all the more important. The report explains that employers with over 10,000 employees who provide mediation training, on average receive 25% less tribunal claims than those who do not. Whilst mediation has been more prominent within the public sector – with a 53% take up rate – private sector employers have been slower to maximise the benefits. This seems strange if you take into account that the average tribunal costs £277,000, according to a recent study from the Centre for Effective Dispute Resolution.

And what exactly amounts to competitive activity? In a recent case an employee who obtained funding from the DTI to develop his product, and requested drawings from product designers which were then sent to a competitor, did not amount to a breach of contract or fiduciary duties to be loyal to his employer. In **Helmet Integrated Systems Ltd v Tunnard** the employee was a mid level salesman, and even although he was obliged under his contract of employment to report competitor activity to his employers, his activities did not amount to a breach of this clause. Essentially an employee can investigate alternative possibilities whilst in employment. The difficulty comes when an employee crosses the line into competition. To provide some specific examples from other cases the courts have viewed an approach to bankers and ordering marketing literature as competitive activity. Another factor to consider is the legal status and seniority of the employee. Had Mr Tunnard been a director then they may have taken a firmer line.

And finally many will have read about the bizarre story of the Nasa astronaut Karen Novak whose extreme jealousy led to a 1000 kilometre cross country mission and the alleged kidnap of a colleague who she thought was having an affair with someone she was close to at work. Relationships at work can cause tricky issues for employers especially when the relationship breaks down. In the recent case of **A v B** the EAT were asked to decide whether a lawyer's dismissal of his secretary, who was his former lover, amounted to sex discrimination. The EAT clarified that a dismissal in these circumstances was not sex discrimination, but was in fact based on jealousy. However the employee could take some comfort from being successful in her unfair dismissal claim. Jealousy, it seems, does not pay!

And that's the D&W employment Vox News for February 2007.

Each month the employment team take an in depth review of a practical issue in their written bulletin. This month the topic is agency workers.

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 **0131 200 7472**. 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 podcast is correct to the best of our knowledge and belief at the time of going to press. It is however written as a general guide, so it is recommended that specific professional advice is sought before any action is taken. We are required by law to protect personal data.

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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