

Transcript of Podcast

September 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

- **Somerfield employee wins YouTube unfair dismissal claim**
- **Former mayor awarded damages for sex discrimination following Council ban on breast feeding**
- **Spying on sick employees - should you be doing it?**

But first, a supermarket worker has been awarded more than £2,000 in compensation after being sacked for posting a video on YouTube. Craig Taylor posted the video clip of a Somerfield employee hitting another employee over the head with a plastic bag. He decided to post the 20-second clip after drinking at home with work colleagues, thinking that it wouldn't do any harm and would be funny. But Somerfield claimed that he had brought the company into disrepute, by showing a lack of concern for health and safety and dismissed him. On the basis that there was no evidence that the video had done any damage to Somerfield's reputation, the employment tribunal awarded Mr Taylor £2,283 in compensation. It would appear from the Tribunal's decision that the chairman was not amused by the clip, saying that the video footage sounded unlikely to have matched the humorous content of the Monty Python Fish Slapping Dance.

This is just one in a line of cases that have emerged over the last year in relation to employee use of digital mediums. YouTube bullying, dismissals for blogging and Facebook recruitment checks are all issues that employers are being forced to address. Whilst these situations appear novel they often mask frequently encountered employment issues and employers should avoid knee-jerk reactions. Clear policies and a case-by-case approach will also serve to protect employers from the hazards of the technological era.

From blogging to breast-feeding: the former Mayor of Trafford has won her claim for unfavourable treatment on the grounds of her sex on the basis that she was prevented from breast-feeding when using the civic car. Trafford Council required Dr Lane to drive behind the limousine in her own car when she took her baby on official engagements. Dr Lane claimed that a male mayor would not have received such treatment and the Tribunal agreed. She has been awarded £7,000 in damages but the Council is also to meet her legal costs which have been reported in the press as amounting to £170,000.

And finally, Swansea Council have been accused of undertaking a 'deliberate and cruel attack' by using private detectives to check on an employee who was off sick. Mr Honey brought a claim for unfair dismissal having been sacked for breach of trust after his employers engaged private detectives to verify his claim that he was off sick with bronchitis. The detectives filmed Mr Honey unloading a beach parasol from the back of a car parked outside his holiday home and also claimed to have heard Mr Honey telling a neighbour that he had just returned from a weekend away. These actions were interpreted by the employment tribunal as a deliberate attempt by the Council to catch Mr Honey out - rather than arising from a genuine belief of misconduct on Mr Honey's part - and agreed that the dismissal was unfair.

According to Peninsula Business Services, as reported in the HR Review, an estimated 81.6 million days are lost each year through false illness claims, and fraudulent sick days alone are identified as costing employers £3.5 billion. Just because a sick employee is seen out shopping or going on holiday does not automatically mean that the absence is fraudulent. And as this case highlights spying on sick employees should always be seen as a last resort. Otherwise an employer may end up paying for a lot more than the private investigator.

And that's the D&W Employment Vox News for September 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 **Catriona Aldridge** on **020 7240 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 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 issues, please call the person at D&W with whom you normally liaise, or one of the following specialists:

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