

Employment

May 2009

Hello and welcome to the D&W Vox, our podcast keeping you up to date with what's new in employment law.

In this D&W Vox, prepared by our employment team, we take a look at:

- **Workplace Mediation gains trade union support**
- **Topping up tips**
- **Excessive termination payment was unenforceable**
- **Too hot to work**

Workplace Mediation gains trade union support

The Scottish Trade Unions Congress recently supported a resolution to work with employers in designing and implementing workplace mediation policies. For employers who are thinking about introducing workplace mediation, this is a really positive step. One of the major blockers to mediation can be unwilling employees who are sceptical about why their employer is suggesting this. Having union members on board will make a real difference in overcoming this resistance. If you are interested in finding out more about workplace mediation, we are offering free access to our online mediation module, which explains what factors to consider before introducing mediation in the workplace. To access our module, please contact [Helen Joseph 0207 759 3530](mailto:Helen.Joseph@dw.com).

No more tips to top-up wages

From 1 October this year employers will be banned from using tips to ensure workers' wages meet the minimum wage. The decision was announced last week some days before the Court of Appeal clarified that tips distributed by troncmasters do not count towards the minimum wage. A number of employers in the hospitality industry use tips to ensure their workers receive the minimum wage instead of paying tips as a bonus in excess of salary.

The Government wants workers to have a fairer wage as well as giving consumers greater clarity. In the press release the Employment Relations Minister, Pat McFadden, said "When people leave a tip for staff, in a restaurant or anywhere else, they have a right to know it will not be used to make up the minimum wage. It is also important for employers to have a level playing field on wages."

The British Hospitality Association, however, says that the move could cost the industry nearly £400m each year, and that more time is needed for restaurants to adopt the new policy, particularly given the current economic climate.

Excessive termination payment was unenforceable

Public bodies are subject to limitations on their spending. They need to act in accordance with their statutory powers, and these actions should be carried out in the public interest in a way that is reasonable. Organisations that exceed these limitations are said to be acting ultra vires. The issue is seldom mentioned in connection with employment law, but was recently invoked by an NHS Trust who decided not to pay the termination payment they had recently agreed as part of a compromise agreement. The £250,000 exit package with their departing Chief Executive was finalised some 5 days before the publication of a damning report on a c.difficile outbreak which criticised the leadership of the Trust. As a result the Department of Health instructed the Trust to only pay the Chief Executive her notice payment - which amounted to £75,000. The Trust was successful in defending their decision not to pay the rest of the contractually agreed payment, which was criticised by the High Court Judge as being 'irrationally generous.' Public and voluntary sector organisations should ensure that termination payments are not only in line with a potential

litigation award, but also their own internal guidelines and ideally approved by a remuneration committee.

And finally if you can't stand the heat...

With forecasters predicting a long, hot summer, the TUC are calling for the introduction of an upper limit on workplace temperature. Although there is a recommendation that office temperatures should be no lower than 16°C there is no similar guidance on upper limits in workplaces.

Reports suggest that employees can suffer from poor concentration, as well as fainting, headaches and dizziness when temperatures are too high, and therefore the TUC is calling for employers to act if the temperature reaches 24°C, and to send employees home if it hits 30°C.

People Management in 2009

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This Podcast Transcript 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.

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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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