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Legally Speaking - Judge & Priestley's Quarterly Legal Update for Commercial Clients

AUTUMN
2019

Disabled workers 'must not be seen as a burden'

The government has warned employers that disabled people should not be seen as a burden or prevented from enjoying fulfilling careers.

The latest figures from the Department for Work and Pensions show that a record number of people have been supported by the Access to Work scheme, with 36,240 having received the grant in the last 12 months.

Government spending on the scheme is also up to record levels, with more than £129m spent last year – a real terms increase of £15m since 2010.

Access to Work is a government-run scheme that breaks down workplace barriers for disabled people and those with health conditions by paying for adjustments such as specialist equipment, support workers, travel to work and sign language interpreters.

People can receive almost £60,000 a year through the scheme to enable them to work, which is more than double the average annual salary and an increase of 40% in just 2 years.

The Minister for Disabled People, Justin Tomlinson, said: "Having a disability or health condition must not be a barrier to enjoying a fulfilling career – and the support available means there's no excuse for employers who refuse to be inclusive.

"Access to Work removes the obstacles facing disabled people in the workplace, helping to level the playing field and ensure businesses don't see employing disabled people as a burden."

Access to Work is part of a wider government drive to create more job opportunities for disabled people, with nearly 950,000 more disabled people in work compared to 5 years ago.

Work and Pensions Secretary Amber Rudd has committed to reviewing the government's goal to see one million more disabled people in work between 2017 and 2027 with a view to making the target more ambitious.

It is against the law to discriminate against disabled people in the workplace. The protection covers most key areas including hiring and firing, salary, promotions, training and job assignments. Employers will normally be required to make reasonable adjustments to facilities and practices to accommodate an employee who is disabled.

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Welcome to J & P's latest newsletter, specially designed to keep you up to date with all the latest legal developments affecting you and your business.

Got something on your mind? ... give us a call or email us.

For more than 125 years we have been providing clients with expert and professional legal advice. We understand the value of a personal and friendly service.

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PRIVATE LANDLORDS - FREE LEGAL CLINIC

WEDNESDAY 27TH NOVEMBER
BECKENHAM OFFICE 16:00 – 18:00

Judge & Priestley is offering free legal advice at their monthly legal clinics. The next one is on Wednesday 27th November by appointment only.

Please call Nita Newsome on 0208 290 7425
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New measures to ensure SMEs are paid on time

The government is planning to ease the cash flow burden on small firms by making the boards of large companies accountable for late payments to suppliers.

It is part of an ongoing effort to tackle the issue of late payment, which can be the difference between success and failure for many SMEs.

Large companies could also face fines and have binding payment plans enforced on them under new proposals from Small Business Minister Kelly Tolhurst.

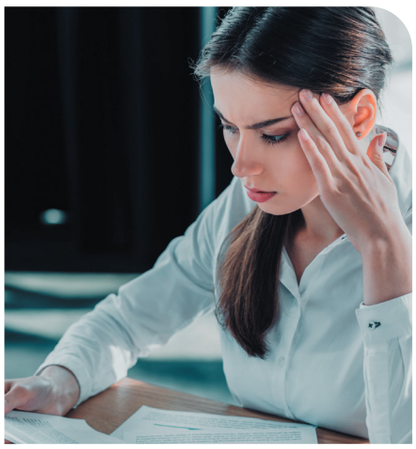
It is hoped this will increase transparency and accountability for late payments. Measures will also force audit committees to report payment practices in company annual reports. The Small Business Commissioner could also be given more powers such as compelling information and disclosure of payment terms and practices, and imposing financial penalties or binding payment plans on large businesses found to have unfair payment practices.

The Small Business Commissioner will also take responsibility for the Prompt Payment Code. This will mean all methods of tackling late payment are assigned to one organisation.

Ms Tolhurst said: “The vast majority of businesses pay their bills on time, with the amount owed in late payments halved over the last five years.

"But as a former small business owner, I know the huge impact a late payment can have on the ability of a small business to plan, invest and grow.

“These measures will ensure that small businesses are given the support they need and ensure that they get paid quickly - ending the unacceptable culture of late payment.”



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Surveyors to pay £50,000 for negligence over knotweed

A man who is almost blind was awarded £50,000 after his North London property became overrun with Japanese knotweed.

Paul Ryb, who represented Great Britain and won the International Blind Tennis tournament, lost his central vision after suffering from a macular disease.

Before purchasing the £1.2m property, on the ground floor of a big Victorian house, the former tennis champion hired Conways Chartered Surveyors to perform a comprehensive survey.

He told the surveyors that he was unable to inspect the property himself because of his failing eyesight. Japanese knotweed was ‘visibly present and growing’ at the property.

However, Conways told Ryb that there were no problems.

Japanese knotweed is a bamboo-type weed that grows tall and spreads quickly. It is very difficult to remove and can undermine foundations.

Ryb purchased the property and moved in with his family in 2014. The following year he was made aware of the knotweed after a conversation with his gardener. It cost him £10,000 to excavate the garden but the knotweed returned. He sued the surveyors for professional negligence.

The County Court heard that Conways had described the property as being in “excellent condition internally and externally”.

The judge described the surveyor as “old school” and said: “He had taken no photographs or measurements. This job gave rise to no special features that singled it out in his memory.”

Ryb was awarded £50,000 damages.

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Customer must pay £81,000 for work on cancelled job

A dispute between a property owner and builder has been settled by the High Court, with the owner ordered to pay for work completed, even though he was not happy with it and the job was cancelled.

The parties had entered into a JCT minor works building contract for work to be done on the owner’s property.

However, after some initial work had been completed, the owner was unhappy with the standard and refused to pay. In response, the builder refused to continue with the project.

Both parties accused the other of repudiation of the contract.

The case was heard by an adjudicator, who found in favour of the builder and ordered the owner to pay £81,000 plus interest and costs.

The owner refused to pay, so the builder applied to the High Court for a summary judgment to enforce payment.

The owner said he wanted a full hearing to determine the dispute. He also offered to provide security pending resolution of the court proceedings. He claimed the adjudicator’s reasons for reaching his decision were erroneous.

The court found in favour of the builder.

There were no errors in this case. The adjudicator had considered all the evidence and come to a reasonable and understandable decision.

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More protection for zero-hour contract workers

Millions of flexible workers are to be given extra protection as part of the government's Good Work Plan initiative.

The new measures are expected to include:

- compensation for workers when shifts are cancelled at short notice
- entitlement to a reasonable period of notice for their allocated shifts
- additional protections for individuals who are penalised if they do not accept shifts at the last minute.

A government spokesperson said: "Innovative entrepreneurs and new business models have opened up a whole new world of working patterns and opportunities, providing people with freedom to decide when and where they work that best suits them.

"It's vital that workers' rights keep pace with these changes, reflect the modern working environment and tackle the small number of firms that do not treat their staff fairly.

"Zero hours contracts can offer great flexibility to workers and help them fit their working lives around their home lives and studies.

However, they can also leave workers uncertain of their expected income and make financial planning difficult."

Nearly 40% of UK workers say that their hours can vary from week-to-week, with approximately 1.7 million individuals feeling anxious that their working hours could change unexpectedly.

The proposed changes will be open to a 12-week consultation. Workers in retail, hospitality and courier services are expected to be most affected by the changes. We shall keep clients informed of developments.

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Recruitment firm prevents former employee joining rivals

A recruitment company has successfully appealed against a decision to allow one of its former employees to join a competitor as a shareholder.

Egon Zehnder moved to prevent its former employee Ms Tillman from joining a rival firm.

In her contract there had been a post-termination non-competition covenant. It stated that the employee should not "within the period of six months from the termination date ... directly or indirectly engage or be concerned or interested in any business carried on in competition with any of the businesses of the company". Tillman wished to join one of Egon's competitors within six months of leaving so the company applied for an injunction to uphold the covenant.

Protect Your Business

However, the Court of Appeal rejected the application.

It held that the word "interested" in the covenant prevented Tillman holding even a minority shareholding in any competing business. It said it exceeded Egon Zehnder's need to protect its interests and was an unreasonable restraint of trade.

Egon appealed that decision and the case went to the Supreme Court.

The key element of the case was considered. Did the covenant's use of the word "interested" fall within the restraint of trade doctrine? Was it unenforceable?

Egon conceded the use of the word "interested" was not ideal but argued the remainder of the covenant should still apply.

The court refused to sever the word "interested" from the covenant but took a practical approach as to whether the restraint of trade doctrine applied.

It agreed that not being allowed to become a shareholder in the competitor company affected Tillman's ability to work.

However, even as a minority shareholder she could influence the competitor's operations which could be damaging to Egon Zehnder.

The decision was overturned and the injunction against Ms Tillman joining the competitor for six months was granted.

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Landlord entitled to give tenant only 2 months' notice

The Court of Appeal has ruled that a landlord was within his rights to end a tenancy agreement without giving his tenant the six-month notice period required under the Housing Act 1988.

The tenant, Sarah Bamber, had agreed a seven-year tenancy on the property, which included a 12-month starter period.

During this starter period, the agreement stated that the tenancy could be ended by the landlord by giving just two months' notice.

The landlord triggered this option and was granted a possession order, which has been upheld by the Appeal Court. It said that because the agreement was being ended within the 12-month starter-period, it was lawful to give only two months' notice.

Although only giving two months was in direct conflict to the requirements set out in the Housing Act, to not apply the provision laid out in the tenancy agreement would make the agreement inoperable.

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Retailer ordered to continue promoting McAfee

The computer software company McAfee has been granted an interim injunction requiring a retailer to continue to promote its product.

A contract between McAfee and DSG Retail stated that the retailer would promote only the computer company's security software in its stores unless it was incompatible with a device, in which case an alternative option would be acceptable.

McAfee discovered that DSG had stopped promoting its products and took legal action for breach of contract.

DSG said that the security software was only compatible with Microsoft's Windows 10S on some laptops and not on PCs or tablets.

McAfee argued that the retailer was not entitled to stop promoting its products just because it was not compatible with all products.

It sought an injunction to require DSG to only promote its security software in its stores.

It said it would suffer significant damages if an injunction was not granted.

The court ruled that on the balance of convenience, it was appropriate to grant an interim injunction.

The case would require input from Microsoft with regards to whether it approved of McAfee's security software.

Both parties needed to request an answer from Microsoft, which could provide a solution before the case went to trial.

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Landlord wrong over service charge for clearing rubbish

A tenant has successfully appealed a service charge he incurred after his landlord removed rubbish from the car park of the property.

The tenancy agreement included the rent payable as well as the right of the landlord to add a variable service charge to cover services specified in the agreement, such as garden maintenance and lighting.

It also stated that the tenant would not leave personal belongings in the common area.

After a problem with fly tipping, a pile of rubbish began to grow in the car park behind the building. The landlord had it removed and charged the tenant.

The tenant brought the case to the First-tier Tribunal, arguing that as tenants didn't have exclusive use of the car park, they shouldn't be responsible for the cost of removing the rubbish.

The tribunal ruled that the landlord was within his rights to apply the charge as the tenancy agreement stated that service charges were variable.

This was overturned by the Upper Tribunal. It ruled that the tenancy agreement did not give the landlord the right to charge the cost of rubbish removal.

There was already a list of services within the agreement that could incur a charge, the landlord was not entitled to add to this.

The service charge being 'variable' meant that costs would rise or fall depending on how much work specified in the agreement was done. It didn't mean different services could be added.

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