

# EMPLOYMENT NEWSLETTER

## OCTOBER 2015

### CASE UPDATE

#### TUPE: Long term sick employee not 'assigned'

Mr Edwards worked for BT Managed Services (BTMS) and was dedicated to a part of the business that undertook phone network maintenance. In 2006 he became permanently incapacitated without any prospect of returning to work and went on long term sick leave. He remained an employee so that he could benefit from PHI and when that was exhausted BTMS gave him discretionary sick pay.

The contract that he worked on transferred to Ericsson in 2013. The EAT agreed with Ericsson that Mr Edwards was not in scope to transfer to Ericsson. To be assigned to the organised grouping there must be some level of participation by the absent employee. The same would not apply to employees who are temporarily incapacitated or absent. **BT Managed Services Ltd v (1) Edwards (2) Ericsson Ltd (2015)**

#### Limits to HR's role in disciplinary proceedings

Mr Ramphal was employed by the DfT as an Aviation Security Compliance Inspector. He spent a large amount of time on the road. Following an audit he admitted to using his employer's credit card for personal purchases on occasions and by accident. He also admitted to giving lifts to friends in his hire car, which he said he didn't realise was prohibited by the employer. The investigating officer completed an investigation report with many positive comments about Mr Ramphal and concluded that nothing greater than a final written warning was appropriate. He was of the view that whilst Mr Ramphal's actions were misconduct, his explanations were plausible and he felt that Mr Ramphal's actions were not deliberate.

Following extensive consultation and discussion with HR, the investigation report went through a number of revisions. It ended with a gross misconduct dismissal recommendation and the removal of all the previously included positive remarks. The EAT remitted the case back to the tribunal on the basis that no new evidence came to light to change the mind of the investigating officer and it seemed the HR advice had gone beyond process and procedure and issues of law. **Ramphal v Department for Transport (2015)**

### WHAT'S AHEAD?\*

When Expected	Change
1 October 2015	There will be an exemption for self-employed people from health and safety laws if they have no employees subject to certain exemptions (such as high risk industries including construction).
April 2016	It is anticipated that a new living wage will be introduced from April 2016 at the initial level of £7.20 rising to £9.00 an hour by 2020. For more information, please see our articles: <a href="#">'In Brief' - monthly round up</a> and <a href="#">The impact of the Living Wage</a> .
2017 (previously scheduled for Autumn 2015)	Tax free childcare scheme. Government will provide 20% support towards childcare costs up to a max of £2000 per child per year. To qualify all parents in the household must work, with income less than £150,000 a year, and don't already receive tax credits or Universal credit. An unsuccessful legal challenge by childcare voucher companies caused it to be pushed back to 2017.

\*To be read in conjunction with the ['What's Ahead' section of September's newsletter](#).



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### LEGISLATION

#### Mandatory Gender Pay Reporting

It is envisaged that regulations will be in force by 26 March 2016 which will make it mandatory for employers with more than 250 employees to publish information on the pay difference between their male and female employees.

It is possible that the regulations will have transitional provisions so it remains unclear when the impact will be felt for businesses and what format the reporting will need to take.

