

EMPLOYMENT NEWSLETTER

SEPTEMBER 2015

CASE UPDATE

Sacked 2 years after posting on Facebook

Mr Smith worked for British Waterways Board (BWB) for 8 years, before being summarily dismissed for gross misconduct. In June 2013, Mr Smith posted offensive and derogatory remarks on Facebook (FB) which BWB alleged had the potential to undermine public confidence in them. Mr Smith alluded to being intoxicated whilst on standby for BWB.

Interestingly Mr Smith was dismissed 2 years after making the FB post but the EAT did not consider that this made the dismissal unfair. It also confirmed that social media cases should be dealt with in the same way as any other employment case. It was also helpful that BWB had a clearly worded social media policy and their disciplinary procedure identified breaches of that policy as being gross misconduct.

British Waterways Board v Smith (2015).

18 month time limit to rolling over holiday pay when on sick leave

Mr Plumb worked as a printer for Duncan Group. Following an accident at work he was absent due to sickness from April 2010 until February 2014, when his employment was terminated. Duncan Group's leave year ran from February-January. In September 2013 Mr Plumb requested to take all of his accrued holiday from 2010 to that date.

The Duncan Group agreed to pay accrued annual leave for that holiday year i.e. 2013-2014, but refused to carry over and pay any holiday from the previous holiday years from 2010-2013. When Mr Plumb's employment was terminated, he brought a claim for his accrued holiday for the three leave years Duncan Group refused to pay. The EAT held that the claim could only go back 18 months. It also established that he did not need to show that he was physically unable to take the holiday due to his illness to be entitled to it on termination.

Plumb v Duncan Print Group Limited (2015).

WHAT'S AHEAD?

When Expected	Change
October 2015	The Modern Slavery Act 2015 will require UK organisations with a turnover of £36 million or more to prepare a "slavery and human trafficking statement" each financial year. This will need to set out what the organisation has done to ensure that there is no modern slavery in their business or their supply chains. It is anticipated that there will be transitional provisions.
1 October 2015	Power of the tribunal to make wider recommendations in successful discrimination claims will be repealed.
1 October 2015	National minimum wage increases expected to be as follows: <ul style="list-style-type: none"> • From £6.50 to £6.70 for adults • From £5.13 to £5.30 for the development rate for workers aged 18 to 20 years old • From £3.79 to £3.87 for 16 to 17 year olds • From £2.73 to £3.30 an hour for apprentices



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LEGISLATION

Trade Union Bill - set to impose new restrictions on industrial action making it more difficult to strike lawfully. The government aims to prevent what it sees as "disruptive and undemocratic" strike action. Proposals include:

- 50% turnout required for a valid ballot on industrial action
- Time limit of 4 months from the date of the ballot for the industrial action to take place failing which a fresh ballot will be required
- 14 days' (instead of 7) notice of strike action
- Introduce a requirement that union members wishing to contribute to a union's political fund 'opt in', instead of the current 'opt out' procedure
- Detailed requirements for picketing for it to be lawful
- Allowing the use of agency workers to cover striking staff