Simpkins & Co SOLICITORS

Employment Law | Personal Injury | Clinical Negligence | Business Advice

...when it's a case of personal injury, clinical negligence, employment or business advice

Newsletter no.27 January 2016

Welcome to Simpkins and Co's monthly e-newsletter

Keeping you up-to-date with the changes in legislation, interesting cases and issues that arise in the following areas of the law; Personal Injury, Clinical Negligence and Employment. We hope you will find it interesting and useful.

You've already Clicked here

This is a printable A4 version of our newsletter

We've listened to your feedback and have produced an A4 version of our newsletter which we hope you will find more user friendly if you wish to print it.

Simpkins & Co Solicitors Sponsor Charity Fundraising Dinner

Simpkins & Co Solicitors were delighted to sponsor the Charity Fundraising Dinner Dance in aid of New Forest Citizens Advice Bureau (NFCAB) held at Beaulieu, courtesy of Lord & Lady Montagu. Lady Montagu is the Patron of the NFCAB.

The event was held in the beautiful and mystical setting of The Domus at Beaulieu Abbey, a 13th Century building. Dan Snow was the after dinner speaker and he gave a very interesting talk about anniversaries, including the Battle of Waterloo, the signing of the Magna Carta and VE Day.

After a 3 course meal with wine, there was an auction and a raffle, and the live band, Zac and The Zeros, finished off a very enjoyable evening.

The event raised approximately £4000 for the NFCAB, which is a local, independent charity with135 volunteers undertaking 158 roles - from advisers and fundraisers, to receptionists and trustees. They are able to run their essential services because they are given grants, sponsorship and donations. Steve Simpkins and Jacque Aitken of Simpkins & Co Solicitors are both Trustees on the board of the NFCAB, donating their time as volunteers.

For more information, visit www.newforestcab.org.uk

Steve and Dan Snow - Dan is 6 feet 5!

Simpkins & Co Solicitors specialise in the following areas of the law:

- **Employment Law** - advising both employees and employers
- **Business Advice**
- **Litigation** and **Contractual Disputes**
- **Personal Injury** and **Accident Compensation Claims**
- **Clinical Negligence Compensation Claims**

If you need advice on these areas of the law, then contact Simpkins & Co Solicitors for a **FREE** initial consultation on **01425 275555** or FREEPHONE **0800 0832755**, email **info@simpkinsand.co.uk** or visit the website **www.simpkinsand.co.uk**

Simpkins & Co Solicitors are accredited members of the Association of Personal Injury Lawyers and the Employment Lawyers Association.

Acas (Advisory, Conciliation and Arbitration Service) gives guidance on tattoos and piercings

Explicitly visible body tattoos and pierced eyebrows may fulfil dress code requirements if you work in a tattoo parlour but what about in the average office?

Tattoos and piercings

It's widely accepted that tattoos in general are far more popular today than they were 15 years ago.

About one in five British people are thought to have one, and they're most popular among 30 to 39-year-olds, with more than a third admitting to being inked, according to one survey.

As for piercings, one in ten people in the UK are thought to have a piercing somewhere other than their earlobe. The practice is evidently extremely popular among women aged 16 to 24, as almost a half (46 per cent) are alleged to have a non-earlobe piercing, or so one study says.

This suggests that managers in the average office may at some point have to think about dress code policy for tattoos and piercings.

Approaching a policy

Fortunately, Acas has recently published some guidance on the topic.

Some organisations may feel that tattoos and piercings are at odds with the ethos or image they are trying to project. They might as a result ask workers to remove piercings or cover tattoos while in the workplace.

But the guidance urges employers to 'carefully consider' the reason behind imposing a rule - as there should be 'sound business reasons' for it.

This could, for example, be a valid health and safety reason, such as keeping dangling piercings away from factory machinery.

Employers should also remember that dress codes must apply to men and women equally, although they may have different requirements and they must avoid unlawful discrimination.

Acas recommends consulting employees over proposed dress codes. Once an agreement has been reached, it should be written down in a formal policy and communicated to all staff 'so they understand what standards are expected from them'.

New Forest choir perform concert for Breast Cancer Awareness

Crescendi is a contemporary choir based in the New Forest, singing a wide range of music from gospel to show tunes, in four-part harmony.

Established in 2010, the choir sings to raise money for charity and to date has raised over £40,000 for a variety of causes.

Once a year they put on their main concert for a charity of the choir's choice. This year it took place on the 6th of December and was in aid of Breast Cancer Care.

Simpkins & Co Solicitors was one of the supporters and a grand total of £1916.50 was raised for the charity.

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We offer an initial consultation **FREE** of charge.

Contact us on **01425 275555** or FREEPHONE **0800 832755** or email **info@simpkinsand.co.uk.**

Jonathan Wheeler, the President of the Association of Personal Injury Lawyers (APIL), responded to press articles about lawyers' costs in medical negligence cases

Government proposals to change the way costs are paid in cases where patients have been injured, reflect the fact that the NHS does not want to pay for its avoidable mistakes. The Government completely overhauled the costs system in 2013, a process which is making dramatic reductions to claimants' costs. As it typically takes several years for a medical negligence case to be resolved, the impact of those cuts will only start to be felt next year, making the tired war stories repeatedly trotted out by the NHS, both misleading and irrelevant. The solutions to the cost of compensation claims are in the NHS's own hands; stop needlessly injuring your patients and, when you do, admit liability quickly instead of dragging the patient to the door of the court, racking up costs along the way, before paying the compensation which was due in the first place. As Steve Walker, the outgoing chief executive of the NHSLA (NHS Litigation Authority), said very succinctly to the British Medical Journal in 2012; "if you stopped getting things wrong so consistently then you wouldn't have to pay in the first place..."

If you have been affected by medical negligence, then contact Simpkins & Co Solicitors for a **FREE** initial consultation on **01425 275555** or FREEPHONE **0800 0832755**, email **info@simpkinsand.co.uk** or visit the website **www.simpkinsand.co.uk**

One of the areas of law that Simpkins & Co Solicitors specialise in, is Medical Negligence Compensation Claims.

Simpkins & Co Solicitors are accredited members of the Association of Personal Injury Lawyers.

"Injured people should not be hoodwinked by new insurance company tactic"

This is the comment made by Deborah Evans, the CEO of the Association of Personal Injury Lawyers (APIL).

She went on to say: -

"One of our goals this year has been to try to cut through the rhetoric between insurers and lawyers with the aim of working with each other, rather than positioning ourselves as natural enemies. It's not always the easiest option, and we have already hit a bump in the road.

Several big, well known insurers have embarked on a new approach - writing directly to the people that their clients have injured, rather than to their lawyers. They send letters asking the injured person to confirm that they have indeed instructed that firm of solicitors (because, they assert, firms sometimes make that sort of thing up). This appears to be a standard letter, rather than targeted towards cases that are in the 'high risk of fraud' category. The letters are strongly worded and vaguely threatening. Yes, the honest client has nothing to fear, but the tone of the letter will undoubtedly put off some genuine clients from proceeding.

The injured person is then formally required by the letter to ring up the wrong-doer's insurer to confirm that they have indeed instructed the solicitor. There is no legal requirement for the injured person to do this, and not phoning the insurer will not prevent the claim from proceeding. But the client will not know this.

Several things are then happening. Firstly, the client is being asked to explain how they instructed the firm - i.e if a referral was made, and by whom. The insurance industry has long wanted this commercially sensitive information and is now demanding that the client provides it in order that the claim can proceed. Again, the client is actually under no obligation to provide this information.

Worse still, we are now hearing reports that when clients contact some insurers, they are then encouraged to stop instructing the solicitor and deal with the insurer direct. The insurers use the 14 day cancellation period tactically to encourage the client to deal with them direct. A measure put in place to protect consumers is now being used against them. This leaves the client unrepresented, with no clear advice as to whether the settlement on the table is good, bad or indeed ugly.

These letters do not play fair. They hoodwink the injured person into thinking that they have to do what is demanded in the letter. Even though the insurer knows that the client is represented, nothing in the letters tells the client to discuss it with their lawyer. This is not about deterring fraud, this is about saving money for the insurers through putting off genuinely injured people from pursuing a claim. It is about saving money through cutting out the lawyers to save legal costs, whilst leaving the injured person bereft of advice and at risk of their claim being under settled. The whole point of having insurance is to compensate those who get injured through no fault of their own. Not just to offer them a cheque but to compensate them properly, following a medical examination to ascertain whether they are injured, the scale of the injuries, and how quickly they will recover, if at all.

Insurers had started to recognise that offering compensation to clients without them undergoing a medical created an environment of easy money which could perpetuate fraud. Lawyers and medics provide checks and balances. Are we going full circle back to the days where insurers try to tempt clients away from lawyers by showing them an open cheque book with no strings attached? Last time this proved short sighted - driving claims up, and ultimately premiums up.

I am hopeful to discuss such practices face to face with insurers, practices that discredit the industry and undermine the trust between insurer, lawyer and client. Facing such issues head on and having honest discussions is the best way to deal with them."

If you have suffered personal injury through no fault of your own, then contact Simpkins & Co Solicitors for a **FREE** initial consultation on **01425 275555** or FREEPHONE **0800 0832755**, email **info@simpkinsand.co.uk** or visit the website **www.simpkinsand.co.uk**

Simpkins & Co Solicitors are specialists in personal injury compensation claims and accredited members of the Association of Personal Injury Lawyers.

European Court addresses annual leave and changes in working hours

Do you ever struggle to calculate your employees' leave entitlement? If an employee's working days or hours change within the leave year what do you do? Does a worker who has used up that year's leave, suddenly gain new leave when their weekly working hours increase?

The European Court of Justice has provided some clarity on these issues in its Judgment in the case of Greenfield v The Care Bureau Ltd, which will be of fundamental importance to all who engage employees on: -

- casual and flexible contracts
- zero-hours contracts
- on a staff-bank arrangement

The details

Ms Greenfield was employed by Care Bureau. Her contract of employment said that her working hours and days differed from week to week. Her contract mirrored the Working Time Regulations and stated that she was entitled to 5.6 weeks of paid leave per year.

In the first part of her leave year, Ms Greenfield worked one day per week. She took seven days of paid leave, which her employer said meant she had used up that year's leave entitlement.

In the second part of the leave year, Ms Greenfield increased her working hours, so she worked on average six days each week. She requested a week of paid leave, but was told that she had exhausted her annual entitlement. When her employment ended near the end of that leave year, Ms Greenfield presented a claim arguing, in effect, that her new increased working hours should be used to calculate leave for the entire year. Birmingham Employment Tribunal asked the European Court for a preliminary ruling on the tricky issue of how her annual leave should have been calculated.

The European decision

The ECJ rejected Ms Greenfield's argument stating that Care Bureau was correct to calculate her leave at the time it was taken. It held that as the purpose of annual leave is to allow the worker rest from the work required under the contract, accrual of leave must be calculated with regard to the work pattern undertaken by the employee at the relevant time. Care Bureau did not have to 'look back' and recalculate the leave for the first part of the leave year to reflect the hours worked in the second half.

However, the ECJ stated that Care Bureau should recalculate Ms Greenfield's annual leave entitlement going forward once her hours had increased. The number of day's leave Ms Greenfield was entitled to (and therefore potentially the pay on termination) should be recalculated for the part of the holiday year in which she was working increased hours.

Any holiday she had taken under her previous working pattern (which exceeded her right to paid annual leave at that time) should be deducted from the 'new' rights accumulated in the period in which she worked increased hours.

The ECJ clarified that the situation is exactly the same whether the individual is employed (and is seeking to take paid annual leave) or employment has terminated (and the individual is seeking to be paid for accrued but untaken leave).

What does this mean for me?

The positive message in this Judgment is that European law does not require accrued holiday to be retrospectively recalculated where a worker's hours increase. This will be a relief to employers who will be spared messy and time consuming adjustments.

However, this Judgment does mean that, when calculating annual leave entitlement, it is necessary to distinguish between periods where an employee works according to different working patterns. The number of days leave due must be calculated separately for each period, with reference to the number of days or hours worked. If an employee had used up their leave before they increase their weekly days (or hours) you must recalculate the leave entitlement for the year to reflect that increase and may need to give them more leave entitlement.

In legal terms this Judgment is as expected. A previous European case had already established that when 'stepping down' from full time to part time work, an employee's accrued holiday entitlement cannot be reduced. It makes sense therefore that, where the reverse occurs, entitlement to holiday should not be retrospectively increased.

Calculating annual leave entitlement for atypical workers is notoriously complex. We would be happy to advise you on how the principles in this decision impact on your organisation.

Contact on 01425 275555 or FREEPHONE 0800 0832755, email info@simpkinsand.co.uk
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Basildon & Thurrock NHS Foundation Trust v Weerasinghe

Appeal against a finding of disability discrimination.

The claimant (Weerasinghe) had a serious lung condition which fluctuated in its effect on his day-to-day abilities. He was able to attend interviews for another job, and courses on the continent, despite being on sick leave and in receipt of sick pay, but was unable to come to see his Clinical Director when asked by him to do so. He was disciplined and dismissed because the decision-maker thought there had been a lack of probity, and assumed (wrongly) that he had been fit enough to see his Director and had not done so. The Employment Tribunal held that this, amongst other things, were all acts of unfavourable treatment by the respondent (Basildon & Thurrock NHS Foundation Trust) arising from his disability, contrary to the Equality Act 2010.

The respondent appealed.

The Employment Appeal Tribunal allowed the appeal.

The Employment Tribunal did not apply the correct test, which is in particular to focus on the need to identify two separate causative steps for a claim to be established - first, that the disability has the consequence of "something", and second that the treatment complained of as unfavourable was because of that particular "something".

If you need advice on employment law, whether as an employee or an employer, then contact Simpkins & Co Solicitors for a **FREE** initial consultation on 01425 275555 or FREEPHONE **0800 0832755**, email **info@simpkinsand.co.uk** or visit the website **www.simpkinsand.co.uk**

Simpkins & Co Solicitors are accredited members of the Employment Lawyers Association.

Simpkins and Co Solicitors only deal in certain areas of the law, the ones we specialise in, which means you get the best advice from the right people. We are specialists in personal injury, employment law, clinical negligence and business advice claims.

We are always happy to take enquiries from Bureau advisors or clients. We operate a FREE initial consultation where we can also advise in relation to funding options as we appreciate that clients are often concerned in relation to potential legal costs.

Contact us to arrange an initial **FREE** consultation: **01425 275555** FREEPHONE: **0800 0832755** or from mobiles: **0333 7777 420**

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