



# Employment and Immigration Update

Manor Royal People Forum

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# Ubers

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- **Workers**
- **Not self-employed; Not employees**
- **Instruction, management, control**
  - Interviews and recruits drivers
  - Induction
  - Control passenger information
  - Accepting fares/Lock out
- **Commercial reality**
- **Artificiality of documents**

***Aslam and Farrar v Uber***

# Sprinters

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- **Bicycle courier = Worker**
- **Logs into CityTrakker**
- **Up to an hour between jobs**
- **Assigned jobs by controller**
- **Paid per job – weekly in arrears**
- **“Confirmation of tender to supply courier services”**
- **Reality was that Dewhurst was integrated into CS’ business**

***Dewhurst –v- City Sprint UK Limited***

# Plumbers

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- **Smith engaged by PP as plumber for 5.5 years.**
- **Heart attack – terminated 4 months later**
- **2009 agreement:**
  - No obligation to offer work or on S to accept it
  - Obligated to work min 40 hours per week
  - 3 month restrictive covenant
  - Obligated to drive PP branded van, and wear uniform
- **S was VAT registered and completed self-assessment**
- **S was worker, not employee**

## ***Pimlico Plumbers –v- Smith***



# Stress as a disability

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- H was Design and Technology teacher
- 2012 – H brought proceedings covering 90 allegations over 4 year period
- 39 day ET hearing
- 317 page judgment
- Costs - £110,111.89
- 2014 – issued claim for disability and race discrim
- Disability – dyslexia and stress
- 2010 – 2013: “pain and stress”
- 2013 onwards – “work-related stress”
- EAT:
  - Costs – should consider S’ means and future income
  - Disability – no substantial impact on day-to-day activities

***Herry –v- Dudley Metropolitan Council***

# Religious discrimination

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- **Mrs P was primary school teacher**
- **Mr P was head of another local school**
  - Jan 2013 – arrested for downloading indecent images and voyeurism
  - July 2013 – sentenced to ten month prison sentence
- **Mrs P**
  - April 2013 – Mrs P told governing body decided it would be inappropriate for her to return to her role if she stood by husband. Complaints from parents.
  - Mrs P dismissed for erosion of trust and confidence.
- **EAT**
  - There was indirect discrimination on grounds of religious belief.

## ***Pendleton v Derbyshire County Council***

## Reasonable adjustments

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- Preserving an employee's level of pay in order to get them back to work in a more junior role did count as reasonable adjustment

### ***G4S Cash Solutions (UK) Ltd v Powell***

- No requirement to extend thresholds in sickness policy in favour of disabled employed
- Duty to make reasonable adjustments not engaged unless policy placed employee at substantial disadvantage

### ***Griffiths v Sec of State for Work and Pensions***

# Trust and confidence

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- Sept 2013: H returns from sick leave. Adjustments recommended but no weekly meeting with Mr Green.
- October 2013: Off sick with depression and anxiety. Sick note mentions bullying.
- Mr Baldwin writes to ask H if she wants to raise grievance. H replies saying too upset and unwell.
- 8 November 2013: letter from Mr B suggesting meeting at end of month + six areas of concern.
- 15 November 2013: H resigns.
- Had been breach of trust and confidence. Concerns raised were not serious and some had already been closed.

***Private Medicine Intermediaries Ltd v Hodkinson***



# Vicarious liability

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- Employer vicariously liable for employee's vicious assault on customer at place of work

***Mohamud v WM Morrison Supermarkets***

- Employer not vicariously liable for assault by employee at drinks after Christmas party

***Bellman v Northampton Recruitment***

# Equal pay

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- **133,000 hourly paid employees, 630 stores, Retail Terms**
- **11,600 hourly paid employees, 24 distributions centres, Distribution Terms**
- **>£100m value**
- **Been going on for almost 9 years!**
- **Seeking to argue that their appropriate comparators are male distribution depot staff**
- **Female shop workers can compare themselves to male warehouse workers**

## ***Brierley v Asda Stores***

# Gender Pay Gap Reporting

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- Will apply to employers with 250 or more employees
- Limit assessment to subsids above threshold
- Snapshot date of 5 April 2017
- Report by April 2018
- Sanctions for non-compliance?

# Preparing for the assessment

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## Gather information:

- Produce a list of all Relevant Employees;
- Identify which of those are male, which are female, and which are Full-Pay Relevant Employees;
- Record all bonuses received in the 'Relevant **Bonus** Period' for all Relevant Employees;
- **For Full-Pay Relevant Employees only**, record:
  - their Weekly Working Hours;
  - all bonuses received in the Relevant **Pay** Period;
  - all Ordinary Pay received in the Relevant **Pay** Period.

## What **must** be published and where?

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1. Mean gender pay gap
2. Median gender pay gap
3. Mean gender bonus gap
4. Median gender bonus gap
5. Proportion of males/females receiving a bonus
6. Proportion of males/females in each 'quartile band'
7. A written statement, authorised by an appropriate senior person, which confirms accuracy of the calculations

**Published on employer's website and on designated government website (tbc)**

# Apprenticeship Levy

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- Introduced from 6 April 2017
- Applies to private and public employers with annual wage bill of more than £3m
- Required to pay 0.5% of annual wage bill towards apprenticeship training
- Allowance of £15k against levy

# Paying the Levy

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- Via PAYE
- Pay bill in excess of £3 Million
  - Connected companies
  - Includes all payments subject to Class 1 NIC's
  - Levy charged at 0.5% of annual pay bill
  - Apprenticeship levy allowance of £15,000 each year
  - Levy is on top of any existing industry levy

# Paying for Training

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- Levy by employer paid into apprenticeship service account
- 10% top up from government
- Training paid for out of service account
- Funds expire 24 months after they enter account if not spent
- From 2018 will be able to direct funds to another employer
- Pooled funds for group companies



# Immigration

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- **Fair dismissal where based on genuine and reasonable belief that employee was not permitted to work in the UK**

*(Nayak v Royal Mail Group)*

# Business Immigration

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## Changes in 2016

- Closure of Tier 2 (ICT) skills transfer route;
- Extension of the criminal offence of knowingly employing an illegal migrant ("reasonable cause to believe");
- Increased powers for immigration officers to enter and search business premises for documents;
- Closure of premises for up to 48 hours in cases of a further offence.

# Business Immigration

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## Changes coming in April 2017

- Immigration Skills Charge of £1,000 per year in respect of most Tier 2 migrants;
- Increase of the salary threshold for most new applicants to £30,000;
- Salary rates in the code of practice for skilled workers to be updated annually;
- Closure of Tier 2 (ICT) Short Term route;
- Requirement for transferees to have at least one year's experience in the sponsor's entity overseas removed for applicants paid £73,900 or more.