



## Allan Janes

solicitors

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### deskbound worker wins compensation for blood clot

An office worker who suffered a blood clot after spending long hours sitting at her desk has received an undisclosed sum in compensation.

Angela Lamberton, 53, worked for HMRC. She had suffered a previous blood clot for which she had been prescribed medication and the treatment was successful. Nevertheless, she had been advised not to sit at her desk for longer than 15 minutes without getting up and moving about.

When new working practices were introduced, however, Ms Lamberton was prevented from following her doctor's advice. Targets were established so that a certain amount of work had to be completed and under the new system staff no longer had to leave their desks in the course of their work.

Ms Lamberton complained to her supervisor that the new system of working was

damaging her health, but was ignored. Within weeks, she had begun to experience pain in her legs. Her GP found she had developed a potentially fatal blood clot and she had to have emergency treatment to disperse it.

The episode has had a huge impact on Ms Lamberton's life. She now has to take blood thinning medication and wear specialist stockings. Her legs are often painful and tired and she is fearful of flying in case she develops another blood clot. A case was brought against HMRC, which admitted liability and settled the claim out of court.

Businesses seeking to make efficiency savings should take care not to neglect their health and safety responsibilities, otherwise they could lay themselves open to claims for damages from employees who suffer illness or injury through no fault of their own but as a result of poor workplace practices.

### get ready for compulsory pensions

The Pensions Act 2008 contains provisions which will make it compulsory for an employer to enrol qualifying workers aged between 22 and the state pension age, who earn more than a de minimus amount (currently set at £5,035 per annum) into a pension scheme and to make contributions to the scheme.

The employer will be required to contribute a minimum of 3% of salary and the employee will be required to contribute a minimum of 4% of salary, up to a maximum of (currently) £3,600 per annum.

There will be substantial fines for failure to comply. Clearly, there are likely to be many changes to the provisions between now and the planned implementation dates, but this is a good time to start thinking through the potential impact of the new regime on your business.

### termination payments – get the tax right

Having to make redundancies is never pleasant but the situation for an employer and employee can be made worse if tax matters with regard to any termination payment are not dealt with correctly. This is a particular risk where PAYE is not deducted when it should have been. If this occurs, the payment made is treated as a 'net' payment and is then grossed up for Income Tax (IT) and National Insurance Contributions (NICs), which adds more than a third to the cost of any payment.

The biggest risk for an employer in these circumstances is where the rules relating to a 'golden handshake' are breached. Normally, up to £30,000 can be paid free of tax to an employee being made redundant, without IT or NICs being payable. Strictly, this is because the payment is not arising from

employment but is, in effect, in lieu of damages for loss of employment.

Normally, such payments are arranged by way of a compromise agreement, by which the employee agrees not to make a claim to the Employment Tribunal in exchange for a payment. The employee's legal fees for advice can also normally be paid by the employer without a tax charge arising.

The important issue here is that the payment must not be contractual, as a payment of any sort under contract is taxable. A payment in lieu of notice, for example, is taxable, as it is a payment arising by virtue of the employee's contractual right to salary during the notice period.

Contact us for advice on any redundancy issue.

## default retirement age to remain – for now



The High Court has handed down its judgment on the challenge to the default retirement age of 65, introduced in 2006 by the Employment Equality (Age) Regulations, which was brought by the charities Age Concern and Help the Aged in conjunction with the Equality and Human Rights Commission.

The challenge was made on the basis that the imposition of the mandatory retirement age meant that the Regulations did not fully implement into UK law EU Council Directive 2000/78, which outlaws age discrimination in employment and vocational training. The matter was referred to the

European Court of Justice, which ruled that a national retirement age may be lawful but must be justified by legitimate social policy objectives, such as those related to employment policy, the labour market or vocational training. It is for the national courts to decide whether a mandatory retirement age can be justified as a proportionate means of achieving a legitimate aim.

The High Court has now ruled against the charities, rejecting their challenge on the basis that the Government was able to justify the imposition of the mandatory retirement age at the time it was first introduced in 2006. However, the decision might have been different had the legislation been introduced now, as the state of the job market has changed considerably. In reaching its decision, the Court took into account the Government's recent announcement that it has decided to bring forward, from 2011 to 2010, its promised review

of the default retirement age. Mr Justice Blake said that he could not presently see how 65 could remain as the default retirement age after the review. More than 260 cases relating to dismissal on the grounds of retirement at age 65 had been stayed pending the High Court's ruling. If the ruling stands, these claims are likely to be dismissed.

There are many workers who wish to continue working after the age of 65 but, for the time being, it is not age discrimination for employers to have in place a compulsory retirement age of 65 or older. However, there are statutory procedures that must be followed, which include giving employees at least six months' notice of their intended date of retirement and notifying them that they have the right to request to continue working beyond either the default retirement age or the normal retirement age set by the employer. Contact us for advice on any discrimination law matter.

## sickness and holiday leave

The EU Working Time Directive lays down minimum health and safety requirements for the organisation of working time. The purpose of the entitlement to paid annual leave is to enable a worker to rest and to enjoy a period of relaxation and leisure. The purpose of the entitlement to sick leave, however, is to enable a worker to recover from illness.

In *Pereda v Madrid Movilidad SA*, the European Court of Justice has ruled that a Spanish worker who suffered an accident at work, with the result that he was on sick leave for most of the annual leave period allocated to him, had the right, on request, to reschedule his holiday, even if this meant carrying it forward to the following leave year.

This follows the earlier case of *Stringer and others v HM Revenue and Customs*, which established that the right to take annual leave is not extinguished if an employee is on long-term sick leave. It is up to the national courts to decide whether paid leave

can be taken during a period of sickness or whether it should be carried over to another year.

Both decisions have raised questions regarding the operation of the Working Time Regulations 1998 (WTR), which implement the EU Directive into UK law.

Under the WTR, if a worker becomes ill just before taking annual leave or during the holiday itself, he or she does not have any automatic right to convert that holiday to sick leave. Also, workers must take a minimum of four weeks' holiday in each leave year. It will therefore require further case law or a change in the legislation to clarify the situation. The Department for Business, Innovation and Skills has said that it is examining the terms of the judgment and will issue further guidance in due course.

This is a grey area and, until the situation becomes clearer, we recommend that employers seek advice on their individual circumstances.

**Allan Janes**  
solicitors

21-23 Easton Street, High Wycombe, Buckinghamshire. HP11 1NT

Tel: (01494) 521301 Fax: (01494) 442315

email: [enquiries@allanjan.es.com](mailto:enquiries@allanjan.es.com)

[www.allanjan.es.com](http://www.allanjan.es.com)