

HR Essentials

1. Giving notice - don't be caught out by an extra day

It has long been established that notice given orally starts to run from the day after it is given. The EAT has recently confirmed that the same rule applies to notice given in writing, i.e a month's notice given and received by email on 3 May will start to run on 4 May and expire on 3 June.

Employers should therefore be careful not to be caught out when the employee is approaching 12 months' service. The extra day should be taken into account when ensuring that any dismissal notices will expire before the 12 month point.

2. Avoiding sex discrimination in a redundancy exercise - beware, it can work both ways

A male employee has just succeeded with a sex discrimination claim arising from the comparison of his treatment in a redundancy exercise with that of a female colleague on maternity leave.

Eversheds solicitors had awarded an employee on maternity leave the maximum notional score for a particular performance criterion in a redundancy scoring exercise, with the result that her male colleague was selected for redundancy. Eversheds were found to have discriminated against the male employee. The EAT found that Eversheds could have used a less discriminatory means of ensuring that those at risk of redundancy were on an equal footing, e.g. by comparing the employees' performance over a period during which they were both at work.

This case demonstrates that employers are not required to exclusively protect pregnant employees or employees on maternity leave from the effect of redundancies. Employers often feel in practice that this may be the safer approach. However, by doing so, they risk discrimination claims from male colleagues. When conducting redundancy exercises involving pregnant employees or employees on maternity leave, a careful approach is required which does not disadvantage them unfairly, but also does not disproportionately protect them to the disadvantage of colleagues.

3. Apprenticeships - approach with care

Apprenticeships are being promoted by the current government. However, whilst apprenticeships bring certain benefits for employers, such as a reduced apprenticeship hourly rate of pay, they also bring disadvantages.

The EAT has recently highlighted that, as an apprentice, the worker has a protected contract and may be able to seek substantial damages for early termination of his training contract, which would include loss of earnings potential.

Whilst each apprenticeship needs to be considered according to its terms, any employer considering an apprenticeship should keep in mind that:

- the arrangement is usually for a fixed term and cannot be terminated early for redundancy;
- it is extremely difficult to terminate the arrangement for poor performance or misconduct;
- the employer has an enhanced obligation to support and monitor the training and development of the apprentice.

The Apprenticeships, Skills, Children and Learning Act 2009 provides for the government to prescribe a model apprenticeship agreement, which may provide some relief from these obligations, but until then employers should approach apprenticeships with care.

The Essentials:

Giving notice - don't be caught out - notice runs from the day after it is received (whether oral or written)

A male employee successfully claims discrimination when a female colleague on maternity leave is unfairly favoured in a redundancy exercise

Apprenticeships - beware the potentially costly implications arising from the greater use of apprenticeships

Please feel free to pass on this update to any contacts who may find it useful.

Contact details for all of our lawyers can be found on our website. Alternatively, please email advice@nicholas-moore.co.uk

www.nicholas-moore.co.uk

Nicholas Moore is a firm of specialist employment law solicitors regulated by the Solicitors Regulation Authority

[Want to unsubscribe or change your details?](#)