



HR Briefing

June 2008

Employment News Update

Staff Handbooks- Contractually binding?

The court has recently held in the case of Harlow v Artemis International Corporation Ltd (2008) that a redundancy policy contained within a staff handbook can be considered an express contractual term of an employment contract.

The facts of the case were as follows: -

Mr Harlow was made redundant from his position at Artemis International. He believed that he was entitled to an enhanced redundancy payment of over £60,000 in accordance with the Company's enhanced redundancy policy contained within the hard copy staff handbook given to him at the start of his employment. He contended that such a policy was either an express or implied contractual term. His statement of terms of employment outlined that 'all other terms and conditions are as detailed in the staff handbook as issued to you, and subject to its most recent update'.

Artemis argued that the intranet site, which had replaced the hardcopy handbook, omitted that particular policy and that any redundancy payments were stated in the policy to be ex-gratia in nature.

The high court held that Mr Harlow's hard copy handbook was incorporated into his contract of employment. It added that the enhanced redundancy policy, when read in a common sense and informal manner, clearly intended to be an express term of Mr Harlow's contract of employment. The High court went on to conclude that even if they had not considered the policy to be an express term of the contract, Artemis's consistent application of the enhanced redundancy payment would have meant that the policy would have been implied into the employee's contract in any event.

So...what does this mean for employers?

Where a contract incorporates another policy such as redundancy policy or a health and safety policy for example, it does not necessarily follow that the provisions of that policy will form part of the employee's contract. Some provisions may detail mere aspirations of the Company, which clearly fall short of contractual obligations.

Key Recommendations

- **A redundancy policy contained within a staff handbook has been held to be an express contractual term of an employee's contract of employment.**
- **Employers should therefore review their handbooks to ascertain which policies they consider to be contractual and which they consider to be mere guidance.**
- **Ensure that those policies which are not intended to have contractual effect are clearly identified**

On the other hand, just because a document is entitled a policy, it may still be considered to be a contractual term by virtue of its nature and the language used within that policy.

In this case the court felt 'that there [was] no doubt that the redundancy provisions would be of importance in the overall bargain, as part of the remuneration package' and therefore apt to be contractual terms.

Employers who continually follow a particular custom or practice contained within such a policy may find that those policies become established as contractual rights.

Employers should therefore ensure that they clearly identify and distinguish those policies, which are intended to be discretionary or to provide mere guidance and/or procedures, from those policies intended to give rise to contractual rights.

Legislation on the Horizon

Changing Benefits- Additional Maternity Leave

All employee's who are entitled to take ordinary maternity leave (OML) can at the expiry of their ordinary maternity leave take a further 26 weeks' additional maternity leave (AML).

At present an employee is only entitled to the benefit of any terms of employment relating to notice, redundancy payments, disciplinary and grievance procedures, and the implied obligation for the employer to maintain mutual trust and confidence during AML.

However, as from 5 October 2008, any employee whose expected week of childbirth is after this date will be entitled to the benefit of the same terms as those benefited from during Ordinary Maternity Leave. That is, the employee will be entitled to all the terms and conditions of their employment, except for the terms relating to pay. In particular:

- (a) any company benefits (e.g. use of company car) shall continue;
- (b) annual leave entitlement under the employee's contract shall continue to accrue;
- (c) pension benefits shall continue; and
- (d) continuous employment shall continue to accrue.

Right to Request Flexible Working here to stay!

The government announced its intention to extend the right to request flexible working to parents with children up to the age of 16. This move followed the publication of the government's independent review on flexible working. The government will now undertake further consultation on how the change is to be implemented.

If you have any queries on any of the above please contact **Alison Loveday** at alisonl@berg.co.uk to discuss further issues. Alternatively you contact **Alison** on **0161 833 9211**. If you do not wish to receive further mailings please email alisonl@berg.co.uk with the words "unsubscribe" in the heading.

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- Discretionary policies such as full pay for sick leave, may become express terms of an employee's contract if applied frequently.

- Employers should review their maternity leave policies to ensure that they take into account changes from 5th October 2008



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