

BANK HOLIDAY LAWS DELAYED

The Government has stated that the new increase in statutory holiday entitlement will be delayed until April 2009. The current right to four weeks' paid annual leave will eventually be extended to 5.6 weeks (pro-rata for part-time staff), subject to a maximum

of 28 days. It was initially proposed that the increase would be effected in two stages, with the entitlement increasing to 4.8 weeks on 1 October 2007, and increasing again to 5.6 weeks on 1 October 2008. However, in its response published on 12 June 2007, the

Government has indicated that it intends to delay the second increase in the holiday entitlement from 1 October 2008 until 1 April 2009. Employers will be able to make payment in lieu of the initial increase (the additional 0.8 weeks) until 1 April 2009.



DANGERS OF WITHOUT PREJUDICE DISCUSSIONS

It is generally accepted that, as a matter of public policy, if an employer and employee want to settle a dispute, without recourse to or continuation of litigation, those discussions may be labelled without prejudice. If that is done correctly the parties are then protected from the contents of the discussions being revealed in court. Put another way, written or oral communications made as part of negotiations genuinely aimed at, but not resulting in, settlement of a dispute cannot be used in evidence in litigation between parties over that dispute.

This rule gives rise to many technical legal arguments. One of them is what is a dispute? If there is no dispute and no negotiations around that dispute then the conversations or correspondence cannot be without prejudice and cannot be withheld from the court.

This can present a problem for the employer who wants

to dismiss an employee and wants to do so in an amicable manner and propose a compromise package to that employee if they leave on amicable terms. If the employee is not already in dispute, and the employer proposes without prejudice terms of a settlement on a without prejudice basis, can the employee refer to that proposal in court? Even more serious, if the employer has made it plain in that proposal that they want to dismiss the employee, can the employee claim they have been wrongfully or unfairly dismissed?

BNP Paribas v Mezzotero was the first reported decision to examine the "without prejudice" rule and its scope in an employment law context. The employee raised a grievance after returning from maternity leave. Her employer told her at a "without prejudice" meeting that she could not return to her old job and suggested a redundancy package. She brought sex discrimination proceedings, claiming that she was victimised by her employers after she had raised a

grievance. The Employment Appeal Tribunal stated that just because a grievance had been raised did not necessarily mean that there was a 'dispute': the meeting was not truly without prejudice and could be referred to in court. The judge also noted that it was "unrealistic ... to refer to the parties as expressly agreeing at this meeting to speak without prejudice, given the unequal relationship of

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the parties, the vulnerable position of the applicant in such a meeting as this, and the fact that the suggestion was made by the respondents only once that meeting had begun."

The Court of Appeal, which is a higher court, has recently considered these matters. In **Framlington Group v Barnetson**, a senior executive employee was negotiating terms of early departure with

his employer. No litigation had been threatened. The Court of Appeal held that the discussions were covered by the 'without prejudice' rule. Although not overruling the Mezzotero case, the Court emphasised the desirability of allowing parties to attempt to settle prospective litigation. It was expressly held that there is no special rule applying to employment litigation, where the early settlement of disputes is as important as in any other area of law. The judge commented that, "the crucial consideration would be whether in the course of negotiations the parties contemplated or might reasonably have contemplated litigation if they could not agree."

Another recent Court of Appeal case has considered the law on 'forced resignation'. An employee was called to a meeting, and told at the outset that he was being dismissed. The rest of the meeting was spent discussing severance terms, and an

(Continued on page 2)



4 Theatre Street
Norwich
Norfolk
NR2 1QY

Dencora House
Theatre Street
Norwich
NR2 1RG

Phone: 01603 660811

Fax: 01603 619473

E-mail: info@hatchbrenner.co.uk

Employment Department: 01603 214205

Civil Department: 01603 674552

Personal Injury: 01603 674544

WITHOUT PREJUDICE DISCUSSIONS

(Continued from page 1)

agreement was reached. The employee later claimed unfair dismissal. The employers argued that this was a termination by mutual consent, rather than a dismissal, but the Court of Appeal did not agree and gave useful guidance for employers: "What is striking in the authorities ... is that in none of the cases in which the employee has been held to resign has the resignation occurred during the same interview/discussion in which the question of dismissal has been raised, and in no case in which the termination of the employee's employment has occurred

in a single interview has a resignation been found to have taken place. The reason for this, I venture to think, is not far to seek. Resignation, as the authorities indicate, implies some form of negotiation and discussion; it predicates a result which is a genuine choice on the part of the employee. Plainly, if the employee has had the opportunity to take independent advice and then offers to resign, that fact would be powerful evidence pointing towards resignation rather than dismissal."

These remain uncertain areas, and one where an employer should always seek advice.

HATCH BRENNER WEBSITE RELAUNCH

We are pleased to announce the launch of Hatch Brenner's newly redesigned website. The site can be found at www.hatchbrenner.co.uk and contains a full description of the services offered by Hatch Brenner, details of key personnel and an insight into the history of Hatch Brenner including archive news articles and photographs from as early as 1935. You can also access all issues of the Employment and Civil Newsbrief via the new website.

Our People

Employment Law

Whether acting for a large international firm or a local sole trader, you can be assured that we offer unrivalled expertise and comprehensive services. From simple contractual advice to TUPE guidance and from preliminary contentious action to representation before the Employment Appeal Tribunal, we are proud to say that we can be there to address all your Employment needs. All the lawyers in the team are specialists in their field and full members of the Employment Lawyers Association.

Richard Cassel



Head of Employment Department. Richard specialises in all aspects of employment and discrimination law.

He is a highly regarded advocate appearing in the Employment Tribunals on a regular basis, and less frequently in the Employment Appeal Tribunal. Richard is has been a Part-Time Chairman of the Employment Tribunals since 1993 and has a considerable experience of Tribunal practice and procedure.

Contact Tel: 01603 214205

Sally Davenport



Sally joined the employment team at Hatch Brenner in 2006. Originally from Cheshire, Sally took a Modern Languages degree at Oxford University, and worked in international banking before pursuing her legal career. She worked as a commercial litigation solicitor with Theodore Goddard, one of the largest London law firms, before moving abroad with her family and developing her own

business as a legal translator. Sally is fluent in Spanish, German and French. Since returning to the UK she has completed a Masters Degree in Employment Law at the University of East Anglia with distinction. She is a Fellow of the Chartered Institute of Arbitrators and is an advisor at a local Citizens Advice Bureau.

Contact Tel: 01603 214205

Jo Chimes

Jo joined Hatch Brenner in June 2002, having been admitted as a solicitor in 1989. She completed her legal training in Norwich before leaving in 1998 to read for a PhD in History at the University of Manchester. At this time Jo also worked with the peer review pilot for the Legal Services Commission, and has continued to peer review in employment law, most recently for the Carter Review on behalf of the Law Society. She is highly active within the profession as a member of the Employment Law Association and also works as a freelance trainer – designing and delivering specialist employment training. She sits on the Law Society employment law committee. Her current practice focuses on complex discrimination matters in employment.

Contact Tel: 01603 214205

Civil Litigation and Personal Injury

We have a well established Civil Litigation department at Hatch Brenner which is headed by Rosemary Escott, partner. For Personal Injury cases we can offer a free initial consultation when we can advise on a range of funding options (including no win — no fee) ensuring each individual client's circumstances are taken into account. We also have specialist legal advisers dedicated to providing an efficient and comprehensive service covering a wide range of commercial disputes including arbitration/mediation/ADR, County and High Court litigation.

Rosemary Escott



Head of Civil Litigation Department. Rosemary is a Personal Injury specialist in fatal and serious injury

claims, arising out of road traffic accidents, accidents at work, clinical negligence and sexual abuse. Member of the Law Society's Specialist Personal Injury Panel since 1995.

Contact Tel: 01603 674539

Mark Fitch



Experienced in a wide range of disputes; enjoys particularly professional negligence claims, contested probate matters and claims against the police. He qualified as a mediator in 2005 becoming one of the youngest members of the Mediators in East Anglia Group.

Contact Tel: 01603 674552

Colin Cook

Colin was previously a partner at a firm in Chancery Lane in London where he dealt with a wide range of personal injury claims for both Claimants and

Defendants.

He deals with all aspects of personal injury including road traffic accidents, accidents at work, criminal injuries, trips and slips. He is an Accredited Senior Litigator of the Association of Personal Injury Lawyers.

Contact Tel: 01603 674544

John Cushing

John is well-placed to assess landlord and tenant claims from both perspectives, having acted for either side in a number of possession actions, rent collection matters and

damages claims. He also deals with other property-related matters including boundary and neighbour disputes, building disputes, and professional negligence claims. He is highly experienced in debt collection, and regularly appears before the district judges in the local county courts.

Contact Tel: 01603 674525