Implementing business change – the importance of ensuring that contractual employee benefits reflect changes to employees' roles

When businesses undergo change and the roles of employees evolve employers should ensure that the contractual benefits offered to employees are updated to reflect those changes. If not, a situation may arise where an employee is unable to enjoy their benefits, leaving the employer exposed to a potential breach of the employment contract.

A recent case has highlighted the risk of losing insurance cover when a policy is not updated following business changes.

Benefits that are provided on a group or company wide basis, such as life and health insurances and death in service schemes need particular care as they tend to be written on broad terms designed to capture a large employee base. But if the nature of the business or the terms of employees' contracts change, the wording of the insurance scheme may no longer be suitable.

While the employee may still be contractually entitled to be part of the business's insurance schemes, this does not guarantee the right to claim on such policies. That is always a question of the interpretation of the relevant insurance scheme rules or policy terms. If the nature of an employee's employment changes the employee may, inadvertently, fall outside the scope of cover offered.

Life and health insurance schemes commonly restrict the scope of cover offered to, for example, employees:

- working in a particular part(s) of the world; or
- carrying out specified activities (especially where the business engages in high risk sectors such as construction, shipping, mining etc).

Therefore, where a business expands its operations internationally, relocates its staff or changes the role staff perform, it is important to ensure the employees will remain covered under the company schemes that they are contractually entitled to.

The recent case of *Pooja Rai v Legal & General Assurance Society Limited*, is an example of how business expansion and relocation lead to an employee (or rather his wife) losing out on his death in service insurance.

Mr Rai was employed to work in England and was contractually entitled to death in service cover. He joined his employer's death in service benefit scheme (the "Scheme"). The Scheme excluded cover for employees "ordinarily resident" outside of the UK, which was uncontroversial for a company with offices in Berkshire.

However, the company later decided to expand and set up offices in India and asked Mr Rai to relocate there to help establish the office. Unfortunately, Mr Rai died in a traffic accident while in India. The company made a claim for death in service benefits due to Mr Rai's wife, which the Scheme insurer rejected due to the exclusion for employees "ordinarily resident" outside of the UK.

While it is possible for a person to be resident in more than one country, the Court decided that on the facts before it that Mr Rai had ceased being resident in the UK and was no longer within the scope of the cover afforded by the Scheme.

The unfortunate result was that Mr Rai's wife and family, apparently inadvertently, were not entitled to payment under the Scheme. The case did not address how this impacted on Mr Rai's employment contract with the company, but it is nonetheless a reminder of the need to ensure that the benefits offered under an employment contract mesh with the terms on which third parties provide those benefits on behalf of the employer.

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