

02 In Focus

Autumn 2016

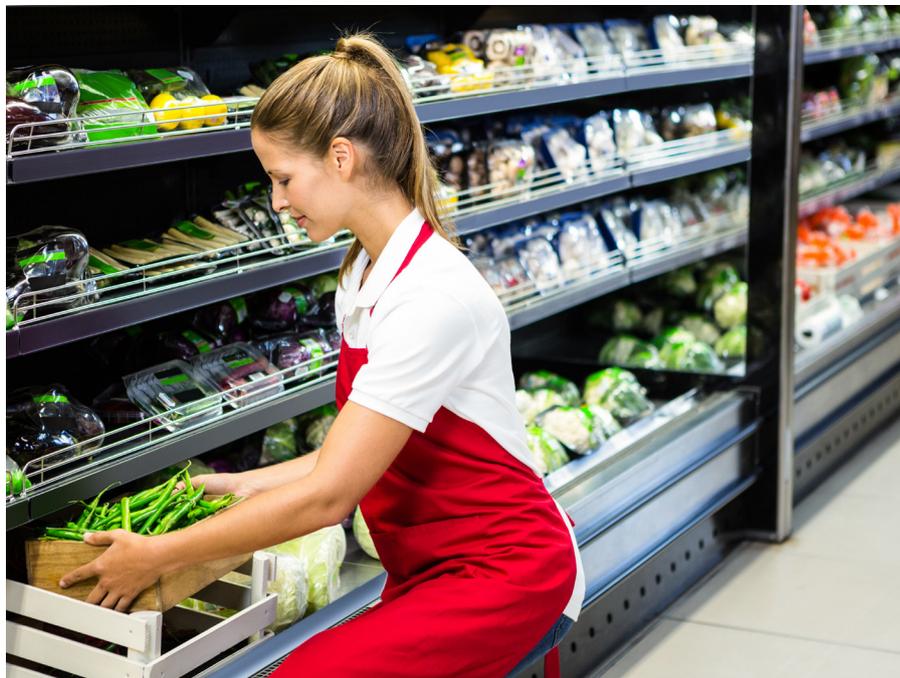
Welcome to the Autumn 2016 edition of *In Focus*, our quarterly update keeping you informed of developments in employment law.

For further information on employment issues, please visit our website www.burges-salmon.com.

In the office

Welcome to **John Smith** and **Victoria Lee** who joined the team following their qualification as solicitors in September.

The Employment Team recently spent time volunteering at the Young Bristol Outdoor Pursuit Centre at Kingscott Farm in order to develop the facilities so more young people could use the site and also extend its use to young people with disabilities.



How equal is equal?

Gender pay continues to be a key issue this year. As we wait for the publication of the final Gender Pay Gap Information Regulations, the high profile ASDA equal pay claims continue.

In *Brierley & Others v ASDA Stores Limited*, the employment tribunal has now decided that the store workers can use the distribution depot workers as comparators in their equal pay claims because they are employed on common terms. As the case involves over 7,000 claims from mainly female workers in hourly-paid jobs in its retail stores, this decision has major ramifications and ASDA is expected to appeal.

ASDA argued that a comparison between store workers and distribution depot workers was not possible because the division of ASDA's corporate structure into retail and distribution operations meant that pay setting powers had been delegated to separate bodies. This was rejected by the employment tribunal

because ASDA's ultimate executive board exercised budgetary control and oversight over both the retail and distribution operations and so had the power to introduce pay equality.

The employment tribunal also held that the store workers' terms were broadly similar to those of the depot workers in that they were all hourly-paid and the structure of terms in the respective handbooks was broadly the same. Although there were some specific differences in the contractual terms, the employment tribunal held that the common terms were broadly similar and this was sufficient for the broad comparison required by The Equality Act.

The case will now continue onto the

more substantive issue as to whether the work done by the workers employed in the retail stores is of equal value to the workers in the distribution depot (subject to ASDA's likely appeal).

In the meantime, The Equality Act 2010 (Gender Pay Gap Information) Regulations 2016 are expected to come into force in April 2017 and employers are advised to review pay practices to identify any potential areas of concern and, if possible, to address them in advance of April 2017. The publication of the regulations

has been delayed but the government consultation on gender pay reporting requirements in the public sector indicates that the reporting regime in the public and private sector will mirror each other. In particular, it is expected that employers will be required to publish data on their mean and median gender pay gap, mean and median bonus pay gap and information on the proportions of male and female employees in each salary quartile. For more information, please see our [briefing](#).

Interesting cases

- Holiday pay and commission – *British Gas Trading Limited v Lock* – please see our [alert](#) for further information.
- HR and disciplinary investigations – *Dronsfield v University of Reading* – please see our [briefing](#) for further details.

To access our recent email alerts, please visit www.burges-salmon.com/news-and-in-sight/?coreplusexpertise=Employment.

News round-up



The Apprenticeship Levy is being introduced in April 2017. The levy will apply to larger employers with a pay bill in excess of £3 million at a rate of 0.5% of the employer's pay bill. The Department for Education has published [guidance](#) on the apprenticeship levy and HMRC have begun [consultation](#) on the draft regulations covering the calculation and payment of the levy.

Changes to the way in which termination payments are taxed are expected to come into force in April 2018. The proposed changes are complex and have been criticised during the government's consultation process, so it remains to be seen whether the government will alter the proposals. The current key changes are that employer's National Insurance Contributions (NICs) will be payable upon all termination payments above £30,000 and all payments in lieu of notice (PILONs) will be taxable whether they are contractual payments or not.

Reforms to public sector exit payments

The Government has published its [response](#) to the consultation on reforms to public sector exit payments. The consultation sets out the proposed exit payment framework which includes a maximum salary of £80,000 on which an exit payment can be based and a maximum tariff for calculating exit payments of three weeks' pay per year of service. There will also be a ceiling of 15 months on the maximum number of months' salary that can be paid as a redundancy payment and a taper on the amount of lump sum compensation an individual is entitled to receive as they get closer to their normal pension retirement age. The Cabinet Office has also published a [response](#) to the consultation on reform of the Civil Service Compensation Scheme.

Publications

- Natalie Jeffries has written an article [Behaving Badly](#) for Employers' Law which covers disparity of treatment for the same type of misconduct.
- Luke Bowery and Kate Redshaw have written an article for Personnel Today on [Pillow Talk - protecting confidential information in the workplace](#).
- Deborah Bulman has written an article on [Discrimination risks: the requirement to speak English at work and dress codes for Employers' Law](#).

Events

- The next seminar in our popular seminar programme is [Hot Topics in Employment Law](#):
 - **Bristol**
6 January 2017; and
 - **London**
2 February 2017.

Please use the [link](#) to register and secure a place. Alternatively, please contact the seminars at seminars@burges-salmon.com.

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