

Welcome

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

For further information on employment issues, please email roger.bull@burgess-salmon.com

Fit for work

The Fit for Work advice service has now been launched in order to support people in work with health conditions and those who are off sick. Free, expert and impartial work-related health advice is available for employers, employees and GPs via the website (fitforwork.org) and telephone on 0800 032 6235 (English).

In addition to the advice service, there will be a phased roll out of a referral service over the next few months with full implementation planned for the end of May 2015.

The referral service will be to an occupational health professional, usually by a GP, but employers may be able to refer an employee if, after 4 weeks of absence, they have not been referred by their GP. The occupational health professional will then identify obstacles preventing the employee from returning to work and produce a Return to Work



Plan tailored to the employee's needs in order to help them return to work.

It remains to be seen how useful this service will be for employers.

All work and no pay?

The government has issued regulations to limit the amount of time for which claims for retrospective holiday pay can be made.

The Deduction from Wages (Limitation) Regulation 2014 came into force on 8 January 2015. These regulations have been produced as a result of the recent holiday pay cases including *Bear Scotland v Fulton* (see our [briefing](#) for more details). These

regulations will limit a claim for unlawful deductions from wages to an unbroken series of deductions going back up to two years. However, the regulations only apply to claims made on or after 1 July 2015. We are already dealing with a number of claims relating to holiday pay and expect to see this increase in the period up to 1 July 2015.

Caste

Although the government has not yet prohibited caste discrimination under the Equality Act 2010 specifically, the EAT has held that the definition of race in the Equality Act is wide enough to encompass caste, as it includes "colour, nationality, ethnic or national origin".

In the case of *Chandhok & another v Tirkey*, Ms Tirkey was employed as a nanny and claimed that she was mistreated by her employers, in part, because of her lower caste. Her employers claimed that this part of her claim should be struck out because caste was not a protected characteristic under the Equality Act. The

employment tribunal refused to strike it out and the EAT upheld this decision stating that elements of caste may in fact form part of an individual's ethnic origin and therefore be part of a protected characteristic despite not being separately being mentioned in the Equality Act. The caste discrimination claim will now proceed to full hearing in the employment tribunal.

The government intends to introduce draft legislation by summer 2015 in order to make caste an aspect of race, and thereby caste discrimination a form of race discrimination under the Equality Act 2010.

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Obesity

The Court of Justice of the European Union (ECJ) has delivered its judgment in the Danish case of *Karsten Kaltoft v Municipality of Billund*, ruling that

severe cases of obesity can amount to a disability. Please see our **briefing** for more details.

Access all areas?

Burges Salmon acted for FirstGroup on its appeal to the Court of Appeal in the case of **FirstGroup PLC v Doug Paulley** regarding the use of the wheelchair space on buses. The key issue was whether bus operators are obliged to operate a "require rather than request" policy for non-wheelchair users to vacate the space when a wheelchair user wishes to board. For more information please see our briefing, **How far must transport providers go to ensure access to wheelchair users on buses?**



News in brief

- Unison has been granted permission to appeal the High Court's decision to dismiss its second judicial review application challenging the legality of employment tribunal fees.
- BIS has launched an **online calculator** to help parents calculate their leave and pay entitlements for maternity, paternity and shared parental leave and has also revised its **Shared parental leave and pay: employers' technical guide**.
- BIS has updated its **Employers' guide to right to work checks**.
- The consolidation of the National Minimum Wage Regulations is expected to take effect on 6 April 2015.
- The right to unpaid parental leave will be extended to parents of any child under the age of 18 years from 5 April 2015.

Email alerts and articles

To access our recent email alerts please visit www.burges-salmon.com/practices/employment/news/default.aspx.

We have recently written an article for Employers Law on **employing workers who are under 18**.

Seminars

For details of the key employment law developments of 2014 and a look ahead at what 2015 has in store for employers, please reserve a place at one of our Hot Topics in Employment Law seminars in:

Bristol – 29 January 2015
London – 5 February 2015

Alternatively, please contact:

seminars@burges-salmon.com

In the office

Congratulations to Luke Bowery and his wife, Helen, on the birth of their first child, a girl.

Peter Finding and his wife, Maxine, have also had a baby girl and our congratulations and best wishes go to them as Peter is now leaving the employment team to return to London.

Our best wishes also go to Amy Whiting who has decided not to return after her maternity leave.

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