



Furniture Times



The Association for British Furniture Manufacturers

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Business opportunity

Kitchen cabinet doors & components

A manufacturer of wooden kitchen cabinet doors and components is sought. These would be solid panel doors with joints. The range is to go on sale via a large UK retailer and a price per unit for various quantities is sought. Some designs are natural, others lacquered or sprayed. The company would need to demonstrate a QA presence in the facility, and possess CNC tooling, coating/painting facility in the same location with FSC chain accreditation. Ideally the manufacturer should offer too, a warehousing/storage capability and potentially to arrange UK delivery. The wood would be supplied to the manufacturer.

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How a claim for holiday pay accrued during long-term sickness was defeated

An Employment Tribunal has dismissed a claim for holiday pay by an employee who had been on long-term sick absence on grounds that the claim was out of time. Paying holiday pay on termination of employment for the current holiday year broke the "series of deductions" claim for the previous holiday years. The law requires a claim to be lodged within 3 months of the last in the series of deductions.

In 2008, Mr Khan's had a total of 6 weeks holiday to take that year; 2 weeks carried forward from 2007 and 4 weeks for 2008. However, in May 2008 he became ill and was



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away long-term before he resigned in August 2009 without returning to work during the 16 month period of his absence. On his termination, the Company paid him in lieu only for the holiday which he had accrued during 2009 prior to his resignation.

Mr Khan disputed this and issued a claim for unlawful deductions from wages for the full 6 weeks. He argued that the fact the holiday for 2007/08 was still owed meant there was still a series of deductions which had not been stopped by the employer making a payment for the 2009 holiday.

He relied on the European Court of Justice decision in *Stringer and other v HM Revenue & Customs* (previously reported in earlier issues), which is authority for the proposition that workers on sick leave continue to accrue holiday rights and that if a worker is prevented from taking their holiday because of sickness they must be allowed to take it following their return to work, even if this results in holiday being carried forward into the next leave year. They are also entitled to be paid for any accrued but untaken holiday on termination on employment.

The Company however, argued that Mr Khan's claim was out of time because the payment in lieu of the holiday for 2009 meant that the 'series of deductions' had been broken and also as the last deduction took place at the end of 2008, Mr Khan had exceeded the 3 month time limit that applied to lodge a claim for an unauthorised deduction of wages. He should have issued it by the end of March 2009.

The Tribunal considered the *Stringer* decision and focused on the finding that workers absent sick are entitled to carry forward their holiday only if they have been denied the opportunity to take it. The Tribunal concluded that as Mr Khan had not actually requested holiday in 2007, 2008 or 2009, he had not been denied the right to take it and therefore his past holiday year entitlements did not carry forward to 2009. *(Note: employees can request to take the accrued holiday while still sick)*

The decision in *Khan* provides some welcome relief for employers. It suggests that if employers pay accrued holiday pay on termination in respect of the last holiday year's outstanding entitlement, this could defeat any on-going holiday pay claim because the series of deductions would be broken.

However, this is only an employment tribunal decision therefore it is not binding on any other tribunal or higher court. Therefore, we must wait now to see what the higher courts decide in similar cases.

Tribunals to pass on whistle blowing claims to regulators

Under the Public Interest Disclosure Act 1998 – known as the ‘whistle blowing’ legislation – an employee may refer suspected employer malpractices to the relevant regulator such as a local authority, the Financial Services Authority, the Serious Fraud Office, HMRC or the Health and Safety Executive.

However, in many cases employees have chosen not to advise the regulator of the alleged malpractice. Instead, employees have used the Act to bring claims at employment tribunals and these can cover for example, endangering a person’s health and safety or a breach of any legal obligation. Until recently, whistle blowing to a regulator and making an employment complaint were entirely separate processes.

In April 2010, a development occurred which is likely to mean that more cases are referred to regulators. Now, if an employee registers a complaint at a tribunal under the Public Interest Disclosure Act, he/she has the option of ticking a box on the application form which gives consent for the information to be passed by the tribunal to the appropriate regulator.

Defending a compliant at a tribunal is one matter, but many employers would not welcome the possibility of an investigation by a regulator as they can be quite onerous. An employer’s reaction to a ‘disclosure’ is relevant evidence in any prosecution and therefore companies may now wish to consider introducing ‘whistle blowing’ policies and procedures – *an example is contained within the employment documentation section in the members’ area of the BFM web site.*

Brief summary of the Public Interest Disclosure Act 1998

The Act provides for protection from detriment or dismissal for workers who disclose information about certain kinds of malpractice (*see below*). Dismissal for the purpose of the Act can include constructive dismissal and a dismissal is automatically unfair if the reason, or principle reason, for it is that the worker makes a ‘relevant protected disclosure’. There is no qualifying service required to be able to bring a claim to a tribunal. Detriment relates to action short of dismissal taken by the employer against the employee as a result of making the disclosure - for example harassment.



The worker does not have to show that the 'disclosure' relates to an actual obligation that the employer has a duty to observe. It is sufficient that the employee reasonably believes that the matter he relies upon amounts to a criminal act/breach of a legal obligation etc, even if this belief is wrong. The claim must be made in 'good faith' and it must be shown that the act of making the disclosure 'caused' the detriment or dismissal. However, if an employee is *primarily* motivated, for example by personal antagonism towards his/her manager (rather than by the 'public interest') the claim is unlikely to succeed. There is no limit to the compensation that can be awarded and injury to feelings awards can also be made.

A disclosure will amount to a qualifying disclosure if, in the reasonable belief of the worker making it, it tends to show that:

- a criminal offence has been committed, is being committed, or is likely to be committed
- a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject
- a miscarriage of justice has occurred, is occurring or is likely to occur
- the health and safety of any individual has been, is being or is likely to be endangered
- the environment had been, is being or is likely to be damaged
- information tending to show that any matter falling within any one of the above areas has been or is likely to be deliberately concealed

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