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HR IN HOSPITALITY
Employment Law Update

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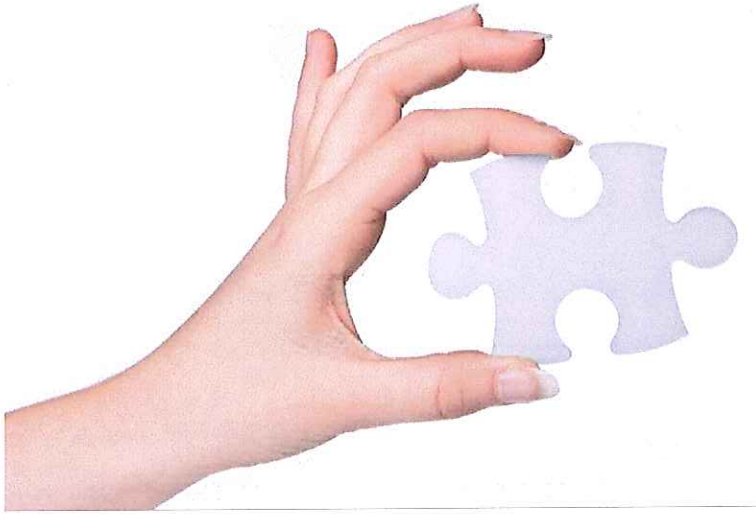
28 November 2013

Agenda

- Employment law reform 2013 - a review
- Key cases of 2013
- Changes to TUPE in 2014
- Other important changes in 2014

Review of Employment Law Reform - 2013

- Employment tribunals - introduction of fees and new rules
- Changes to collective redundancy consultation
- Changes to whistleblowing legislation
- Protected "pre-termination negotiations" and settlement agreements
- Significant case law decisions 2013



Introduction of fees - Employment Tribunals

- Following government consultation, the new fee system was introduced on 29 July 2013
- Two-stage payment

Type of claim	Issue fee	Hearing fee
Type A	£160	£230
Type B	£250	£950

- EAT will mirror the two-stage structure - £400 issue fee and £1,200 for full hearing
- HMCTS' fee remission service - extended to employment tribunals on 7 October 2013

Employment Tribunal Rules of Procedure 2013

- Came onto force on 29 July 2013
- Key aims
  - ability to accept / reject claims and responses
  - proportionality - no binding rules - 'culture' of effective case management
  - speed and efficiency - new "sift" stage
  - introduction of presidential guidance - to encourage certainty and consistency - standardised orders and directions where possible
  - case management powers
  - simplicity - new rules shorter with simplified language

Changes to Redundancy consultation

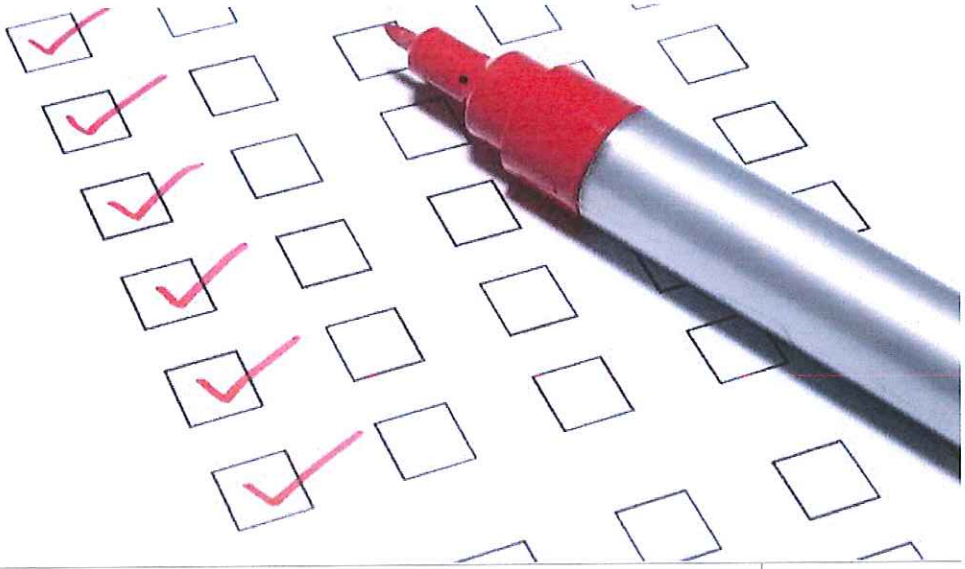
- Following changes implemented on 6 April 2013
  - consultation period for 100+ redundancies reduced to a minimum of 45 days (rather than 90 days)
  - however - the compensation payable in respect of a failure to consult remains at 90 days
  - fixed term contracts will be excluded from the collective redundancy requirements (provided that contracts have clear termination point)
  - ACAS has issued non-statutory guidance to ensure effective consultation with employees

Changes to Whistleblowing legislation

- Changes to whistleblowing legislation were introduced with effect from 25 June 2013
  - new "public interest" requirement introduced
  - good faith requirement removed
  - introduction of vicarious liability
- Further consultation regarding changes underway
  - Whistleblowing Commission consultation launched on 23 March 2013
  - Government Consultation launched on 12 July 2013

Pre-termination negotiations and settlement agreements

- Pre-termination negotiations inadmissible in respect of ordinary unfair dismissal - introduced on 29 July 2013
- July 2013 - ACAS published
  - Statutory Code of Practice on Settlement Agreements
  - Settlement Agreements: A Guide



Key cases of 2013 (1)

- Collective Redundancies - removal of "at one establishment"
  - *USDAW v Ethel Austin Ltd* (in administration; USDAW v Unite the Union [2013], WW Realisation 1 Ltd, Secretary of State for Business Innovation and Skills [2013] [UKEAT/0547/12/KN] and UKEAT/0548/12/KN]
  - *Lyttle v Bluebird UK Bidco 2 Limited* [2013] NIIT 00555_12IT
- Working Time - overtime payments and shift premiums included in the calculation of his holiday pay
  - *Neal v Freightliner* [2013] ET/1315342/12
- Disability discrimination - not outside the scope of reasonable adjustments for an employer to fund private medical treatment
  - *Croft Vets Limited v Butcher* [2013] [UKEAT/0430/12/LA]

Key cases of 2013 (2)

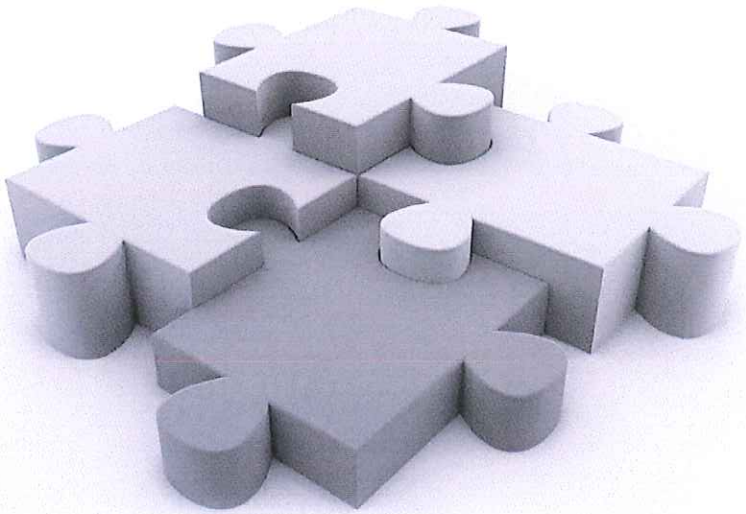
- Implied Terms by Custom and Practice
  - *Park Cakes Ltd v Shumba & Ors* [2013] EWCA Civ 974
  - *CSC Computer Sciences Ltd v Mr B McAlinden and Others* [2013] [UKEAT/0252/12/LA]
- Unfair Dismissal - dismissal is not necessarily within band of reasonable responses to act of gross misconduct
  - *Brito-Babapulle v Ealing Hospital NHS Trust* [2013] UKEAT/0358/12
- Victimisation - dismissal as a result of repeat complaints of race discrimination held to be victimisation
  - *Woodhouse v West North West Homes Leeds Ltd* [2013] [UKEAT/0007/12]

Key cases of 2013 (3)

- Constructive Dismissal - failure to conduct an impartial grievance process can breach the implied term of trust and confidence
  - *Mr D Blackburn v Aldi Stores Ltd* [2013] [UKEAT0185/12/2907]
- Final Written Warning - tribunal will look behind the sanction if "manifestly inappropriate"
  - *Mr C Simmonds v Milford Club* [2012]

Anticipated Key Changes - 2014

- Changes to TUPE
- Introduction of mandatory conciliation
- Revocation of disability discrimination questionnaires



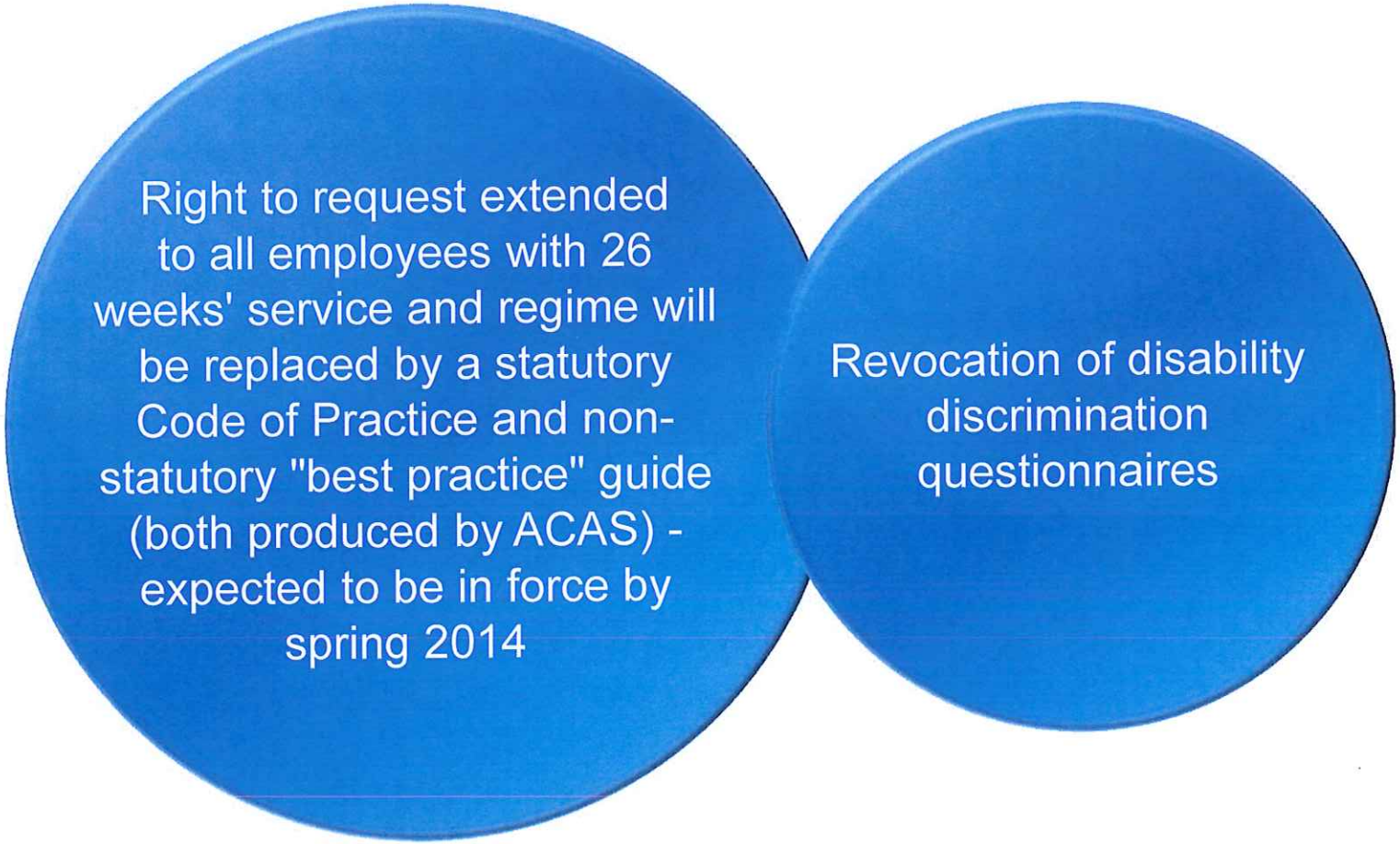
Changes to TUPE 2006

- Service provision change retained BUT only triggered if activities carried on are "fundamentally the same"
- Employee liability information ("ELI") will also be retained - but ELI will need to be provided 28 days before the transfer
- Amendment of Regulations 4 and 7 - no "gold-plating" of Acquired Rights Directive
- Renegotiation of terms derived from collective agreements permitted in certain circumstances
- ETO reason to include change to the location of the workforce
- Consultation by transferee to count towards statutory redundancy consultation

Mandatory "early conciliation"

- Introduction of mandatory 4-step conciliation procedure
  - claimant will notify a conciliation officer regarding their claim
  - ACAS will send information to the conciliation officer who will attempt to contact both parties
  - conciliation officer promotes settlement within "prescribed period"
  - if fails, claimant can present claim to employment tribunal
- If parties enter into EC, will "stop the clock" on limitation
- Expected to be introduction in April 2014

Other key changes - April 2014



Any questions?

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