



## **Bevans**

solicitors

Grove House  
Grove Road  
Bristol BS6 6UL  
Tel: 0117 923 7249  
Fax: 0117 923 7253  
DX: 99880 Redland Bristol

### **CITY \*\*\*CKERS (SLICKERS) - August 2003**

In a widely publicised case in the High Court involving Cantor Fitzgerald International, Steven Horkulak has been awarded nearly £1 million for constructive dismissal. The case involved a high flying (in more ways than one) city broker who was regularly shouted and sworn at by his boss. In one incident he was subjected to a savage verbal attack from his boss over the telephone involving foul and abusive language because he had missed out a set of brackets in a bonus document.

The employer argued that the use of swear words was accepted and established practice within the company and that Mr Horkulak was unable to cope with the pressures of his job. Newspaper reports focused on the admissions of heavy drinking and drug taking within the city brokers environment.

Despite the tittle tattle newspaper reports, the case is important because it confirms that the use of foul and abusive language by a manager can undermine an employment contract and allow the employee to resign and sue. The court also made clear that threats to dismiss should not be used to intimidate an employee.

### **KEEP ON ROLLING**

Following on from the Munro case reported in our last bulletin the same issue has been considered by the Employment Appeal Tribunal in England. The question is whether an employer who pays a rolled up rate of pay to include holiday pay is complying with the Working Time Regulation. The Tribunal ruled that it can be lawful to roll-up holiday pay into normal salary and set out guidance for doing this as follows: -

- The rolled-up holiday pay must be clearly incorporated into the individual contract of employment, and thus expressly agreed.
- The allocation of the percentage or amount to holiday pay must be clearly identified in the contract, and preferably also in the payslip.
- It must amount to a true addition to the contractual rate of pay.
- Records of holidays taken must be kept.
- Reasonably practicable steps must be taken to require the workers to take their holidays before the expiry of the relevant holiday year

This is an important decision as it clarifies the law in this area. There are a number of industries within which the practice of rolling-up holiday pay is very common, for example the building and construction industry and for temp workers. The practice is administratively simple and cuts out time spent trying to calculate how much holiday has accrued and can be taken and is also much easier when people leave employment.

The good news for employers is that they can roll up holiday pay. However, in order to comply with the Working Time Regulations you must ensure that contract is clear and unambiguous when dealing with salary. If you do pay staff rolled-up holiday pay then you should review your contracts to ensure that they comply with the new guidance given by the Tribunal.

## **CONTRACT REVIEW OFFER**

In the light of this important case dealing with rolled-up holiday pay, Bevans Solicitors are offering a free contract review to identify whether the contract complies with legal requirements.

Please contact either Guy Hollebon (ghollebon@bevans.co.uk) or Nick Rowe (nrowe@bevans.co.uk) of the Employment Team to arrange for your free review.

Ends.  
13<sup>th</sup> August 2003

***This information is believed to be correct at 13 August 2003. It is not a substitute for legal advice and no liability attaches to its use. Specific and personal legal advice should be taken on any individual matter.***