# Employment law Dispatches

December | 2024

Willans LLP | solicitors

## Welcome...

...to the latest issue of Dispatches, covering the most recent updates & case news in employment law.

As 2024 comes to a close, we would like to thank you for reading our newsletters throughout what has been another busy year in the legal world for employers and employees. Enjoy the festive season and we will be back in the new year!

Should you need our support, please get in touch with our team.

## At a glance

- Our new HR offering
- Right to work checks
- Transparency

**Jenny Hawrot**
Partner & head of department

**Matthew Clayton**
Partner

**Simon Pathé**
Partner, chartered legal executive

**Hifsa O'Kelly**
Associate, solicitor

**Klára Grmelová**
Solicitor

**Achante Anson**
Paralegal

## HR support service launched

We're pleased to announce that we recently launched our HR support service, to assist businesses of all sizes with both their day-to-day and strategic HR requirements.

We work alongside external consultants to help both national organisations – as well as those based in Gloucestershire – that would benefit from joined up thinking and guidance from both their legal and HR advisors.

The consultancy is also aimed at those in need of additional resource or unable to take on certain investigations internally due to their sensitive nature. By providing a seamless service, with both legal and HR advisors working together, we can ensure our clients benefit from a consistent approach and outcomes are delivered as efficiently and cost-effectively as possible.

The HR support offering was devised by the firm's employment and business immigration team – recommended by national guides *The Legal 500* and *Chambers UK* – who noticed that they were often contacted by businesses for help with their HR needs.

Head of employment and business immigration, Jenny Hawrot, commented: "After a few years of successfully running this consultancy behind the scenes, we're delighted to officially launch our HR support service as part of the firm's offering. It's a pleasure to work with organisations based both in Gloucestershire and further afield, and it's really rewarding to be able to offer this extra level of support to help them manage their people and ultimately achieve their business goals."

Work undertaken by Willans' carefully selected HR consultants includes workplace grievance procedures, assistance with TUPE and redundancy processes, policy and process reviews, staff training and leadership programmes, employee engagement and recruitment support, development of HR strategies and more.

Find out more about Willans' HR support service here.

# Update to right to work checks guidance

All employers in the UK have a duty to prevent illegal working, regardless of whether or not they engage migrant workers. To fulfil this duty, employers are required to conduct right to work checks before employing anyone.

Right to work checks ensure that an individual is not prohibited from working in the UK due to their immigration status. If conducted in accordance with UK Visas and Immigration (UKVI) guidance, these checks provide the employer with a 'statutory defence', protecting them from civil penalties related to illegal workers.

The UKVI recently updated its guidance on right to work checks. One of the most significant updates is the introduction of a strong recommendation for businesses to verify that their contractors and labour providers conduct the appropriate right to work checks on those they employ, engage or supply. The guidance even suggests that businesses may choose to perform these checks themselves.

The guidance clarifies that, where a worker is not a direct employee (for example, if they are self-employed), businesses are not required to establish a statutory excuse. However, they might still need to carry out checks and retain evidence to comply with other duties, such as sponsor duties.

The guidance on the supplementary employment of migrant workers and related right to work check requirements has also been updated to reflect recent changes to route-specific guidance. It now confirms that supplementary work is no longer restricted to roles within the same sector or SOC code. It also clarifies any right to work related duties businesses have in such a scenario.

Additionally, the updated guidance provides welcome clarification on the steps employers must take when conducting follow-up right to work checks in cases where the initial check is time limited.

**What should employers do?**

The UKVI frequently updates its guidance, and businesses are encouraged to ensure they are compliant with the most recent version before conducting any right to work checks. Businesses are also now encouraged to verify the right to work checks conducted by their contractors and labour providers. ■

hifsa.okelly@willans.co.uk
linkedin.com/in/hifsaokelly/

# Black cab taxi drivers: can they be considered 'workers'?

GT Gettaxi ("Gettaxi") owned a mobile app which allowed members of the public to book licensed black cab taxi services remotely. Members of the public would be assigned an allocated driver and licensed black cab taxi drivers could apply for an account in order to benefit from its services.

Johnson was a licensed black cab taxi driver who had an account with the Gettaxi app ("the app") between 2015 and 2017. In 2020, Johnson re-applied to use the app and his application was refused. Johnson claimed that this was due to a protected disclosure that he had made previously.

Initially, the Employment Tribunal (ET) sought to establish whether Johnson was a worker. Contrary to the findings in *Uber v Aslam*, the ET and Employment Appeal Tribunal (EAT) both held that the drivers using the app were not workers – they had their own businesses as licensed black cab taxi drivers and were using the app in order to gain more sales and reach a wider audience.

They reached the following conclusions which were contrary to those in *Uber v Aslam:*

- There were no penalties if the drivers using the app rejected requests for their services or if they followed their own route
- Drivers could make their own arrangements with passengers regarding other journeys
- Drivers could use alternative methods to obtain passengers and were not limited to using the app exclusively.

**What should employers do?**

As an employer, it is important that from the outset and throughout that you are clear as to the nature of the relationship between your business and the individual that you are engaging with, as well as documenting this clearly. This would be best practice going forward as it is clear that tribunals will take a very fact-specific approach, and would help to avoid any potential adverse tribunal attention. ■

klara.grmelova@willans.co.uk
linkedin.com/in/klaragrmelova/

# The importance of being transparent with employees

Section 111A of the Employment Rights Act 1996 allows for pre-termination discussions to be inadmissible in 'ordinary' unfair dismissal claims, providing that they are carried out without any 'improper' conduct.

Gallagher was a branch manager at McKinnon's Auto and Tyres Ltd ("McKinnon's"). After a period of sickness related absence, Gallagher returned to work and was subsequently dismissed by reason of redundancy.

Prior to this, McKinnon's held an 'off the record' meeting where they offered Gallagher a settlement agreement with 48 hours to respond. During this conversation, McKinnon's implied that if Gallagher did not accept the offer, termination by way of redundancy was inevitable.

Following his dismissal, Gallagher brought a claim of unfair dismissal and sought to rely upon the conversation with McKinnon's. However, the ET rejected his claim on the basis that there was no 'improper' conduct, therefore the conversation with McKinnon's was inadmissible.

Gallagher appealed on the following grounds:

- His first meeting was entitled "return to work" which meant the contents of the meeting caught him off guard
- He was only given 48 hours to respond to the offer
- He was told that rejecting the settlement offer would make a redundancy outcome inevitable.

The EAT held that none amounted to 'improper' conduct given the circumstances. Whilst it was not fair to raise the issue of the settlement in a discussion Gallagher thought was a 'return to work' meeting, it did not amount to improper conduct. The conversation could therefore not be relied upon by Johnson.

Additionally, the EAT highlighted the difference between redundancy and disciplinary situations, whereby undue pressure is covered by the ACAS code at paragraph 18(e)(ii) in the context of a disciplinary process, not a capability or redundancy process. The EAT made a distinction that an employee was more likely to feel undue pressure to sign a settlement agreement in a disciplinary context if an employer said they would be dismissed if they reject a settlement proposal, as that would effectively confirm the outcome of the investigation and disciplinary process, causing the employee to have no faith in the integrity of the process if they refused. However, in a redundancy context, the EAT made a distinction that a redundancy process was different and that confirmation that a role would be redundant does not inevitably mean that the person who performed the role would be dismissed.

**What should you do?**

As an employer, it's important you are transparent with employees regarding the contents of meetings, especially when they concern their employment or its termination. It is also useful to consider the timescales given in relation to a response, especially in settlement agreement circumstances where 10 days is considered reasonable to review the contents and take advice. It is evident that the tribunal will look at all the circumstances surrounding an employer's discussion with the employee, and how that discussion was perceived by the employee. ■

achante.anson@willans.co.uk
willans.co.uk/team/achante-anson

More news on our website **www.willans.co.uk**

## Contact

**For advice on any of the issues covered in this bulletin or any other area of law, please contact these people in the first instance.**

### Employment law

Jenny Hawrot
jenny.hawrot@willans.co.uk

Matthew Clayton
matthew.clayton@willans.co.uk

Simon Pathé
simon.pathe@willans.co.uk

### Charities & not-for-profit

Alasdair Garbutt
alasdair.garbutt@willans.co.uk

### Litigation & dispute resolution

Paul Gordon
paul.gordon@willans.co.uk

Nick Southwell
nick.southwell@willans.co.uk

### Corporate & commercial

Chris Wills
chris.wills@willans.co.uk

Peter Raybould
peter.raybould@willans.co.uk

### Real estate & construction

Alasdair Garbutt
alasdair.garbutt@willans.co.uk

Nigel Whittaker
nigel.whittaker@willans.co.uk

### Divorce & family law

Sharon Giles
sharon.giles@willans.co.uk

Jonathan Eager
jonathan.eager@willans.co.uk

### Wills, trusts & probate

Simon Cook
simon.cook@willans.co.uk

Rachel Sugden
rachel.sugden@willans.co.uk

Tom O'Riordan
tom.oriordan@willans.co.uk

Laura Stone
laura.stone@willans.co.uk

### Agriculture & estates

Adam Hale
adam.hale@willans.co.uk

John Fisher
john.fisher@willans.co.uk

### Residential property

Suzanne O'Riordan
suzanne.oriordan@willans.co.uk

Simon Hodges
simon.hodges@willans.co.uk

Mary Young
mary.young@willans.co.uk

**Willans LLP solicitors**

34 Imperial Square,
Cheltenham
Gloucestershire GL50 1QZ
+44 (0)1242 514000

law@willans.co.uk

www.willans.co.uk

Follow us on Facebook, X, Instagram & LinkedIn