**Recent decisions and current employment cases before the**

**European Courts**

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| Notes for EELA talk by Michael Rubenstein  **10 June 2017**  [Michael@Rubensteinpublishing.com](mailto:Michael@Rubensteinpublishing.com) | Twitter_bird_logo.png  Follow Michael on Twitter: @mhrubenstein |

**Working time**

1. ***Sobczyszyn v Podstawowa***, C-178/15 [2016] IRLR 725 CJEU

An employee is entitled to paid annual leave in respect of time during which they were on sick leave.

2. ***King v The Sash Window Workshop Ltd***, C-214/16 CJEU- pending

Can annual leave be carried over where the worker would have taken more holiday but for the fact that the employer refused to pay him for that period?

3. ***Maschek v Magistratsdirektion der Stadt Wien***, C-341/15 [2016] IRLR 801 CJEU

An employee who has terminated their own employment is entitled to pay in lieu of untaken holiday entitlement.

4. ***Kreuziger v Land Berlin***, C-619/16 CJEU – pending

Is an employee entitled to pay in lieu of untaken annual holiday entitlement if they did not apply for annual holiday but could have?

5. ***Max-Planck-Gesellschaft zur Förderung der Wissenschaften eV v Shimizu***, C-684/16 CJEU – pending

Can entitlement to annual leave be made conditional on the employee informing the employer of their preferred holiday dates?

6. ***Ville de Nivelles v Matzak***, C-518/15, CJEU – pending

Is on call time for firefighters working time where they are at home but have a duty to respond within eight minutes?

7. ***Hälvä v SOS-Lapsikylä ry***, C-175/16, CJEU – pending

Does work in a children’s home acting as the representative of foster parents on their days off fall within the “family work” derogation?

**Transfer of undertakings**

8. ***Unionen v Almega Tjänsteförbunden, ISS Facility Services AB***, C-336/15, 6 April 2017 CJEU

The Directive precludes discrimination a year after the transfer as regards terms of employment between former employees of the transferor and employees of transferee.

9. ***Asklepios Kliniken Langen-Seligenstadt v Felja***, C-680/15, 27 April 2017 CJEU

A contractual term which provides that terms of employment transfer on a dynamic basis is not precluded by the Directive if the transferee can negotiate changes.

10. ***Federatie Nederlandse Vakvereniging v Smallsteps BV***, C-126/16, CJEU – pending

Does a “pre-pack” fall within the Directive’s exception relating to bankruptcy or insolvency proceedings?

**Insolvency protection**

11. ***Hampshire v Board of the Pension Protection Fund***, C-17/17, CJEU – pending

Does the Insolvency Protection Directive require each employee of an insolvent employer to receive at least 50% of the value of their accrued pension entitlement?

**Collective redundancies**

12. ***Anonymi Geniki Etairia Tsimenton Iraklis (AGET Iraklis) v. Ypourgos Ergasias, Koinonikis Asfalisis kai Koinonikis Allilengyis***, C-201/15 [2017] IRLR 282 CJEU (GC)

Greek legislation requiring authorisation of redundancy dismissals contravenes the right to freedom of establishment in Article 49 of the EU Treaty.

13. ***Bichat v APSB***, C-61/17, CJEU – pending

What is a “controlling undertaking”?

14. ***Socha v Szpital Specjalistczny***, C-149/16, CJEU – pending

Is the obligation to consult triggered by contractual notice to change pay and working conditions?

**Dismissal**

15. ***Mattu v United Kingdom***, ECtHR – pending

Does Article 6 protection apply to how an employer conducts a disciplinary procedure?

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**Workplace privacy**

16. ***Barbulescu v Romania***, ECtHR (GC) - pending

Is it a violation of the Article 8 right to privacy for an employer to access an employee’s work-related email account to ensure that it is not being used for personal purposes?

17. ***Surikov v Ukraine***, [2017] IRLR 377 ECtHR

Collection, storage, and disclosure of mental health information by employer violated Article 8.

**Trade union rights**

18. ***Unite the Union v*** ***United Kingdom***, [2017] IRLR 438 ECtHR

Abolition of the Agricultural Wages Board was not contrary to Article 11 of the European Convention.

19. ***IWGB v United Kingdom***, ECtHR – pending

Does the bar on a trade union under UK law from making an application for statutory recognition where another union is recognised contravene Article 11?

20. ***Straume v Latvia***, ECtHR – pending

Did dismissal of trade union leader following letter of complaint about working conditions contravene Convention rights?

**Fixed term work**

21.***Diego Porras v Ministerio de Defensa***, C-596/14 [2016] IRLR 964 CJEU

That a worker was employed under a temporary replacement contract was not an objective justification for not making a severance payment when permanent workers received one. “Objective grounds” requires unequal treatment to be justified by precise, specific factors.

22. ***Pérez López v Servicio Madrileῇo de Salud (Comunidad de Madrid)***, C-16/15 [2016] IRLR 978 CJEU

It is contrary to the Framework Agreement on fixed-term work for fixed-term contracts to be used to cover permanent needs.

**Pregnancy**

23. ***Otero Ramos v Servizo Galego de Saude***, C-531/15, CJEU - pending

How does the burden of proof operate in a case where a risk has been identified for a woman who is breastfeeding?

24. ***Gonzalez Castro v Mutua Umivale, Prosegur España***, C-41/17, CJEU - pending

Does the prohibition on breastfeeding mothers working nights cover shift work when some shifts are at night?

25. ***Porras Guisado v Bankia SA***, C-103/16, CJEU – pending

Are redundancy dismissals “exceptional cases not connected” with pregnancy falling within the exception in Article 10?

**Sexual orientation discrimination**

26. ***Parris v Trinity College, Dublin***, C-443/15, [2017] IRLR 173 CJEU

It is not unlawful sexual orientation discrimination for an occupational pension scheme to only pay survivor’s benefit to a civil partner if they entered into the civil partnership before the member’s 60th birthday, where the national civil partnership legislation did not come into force until after the member’s 60th birthday.

**Disability discrimination**

27. ***Daouidi v Bootes Plus SL***, C-395/15 [2017] IRLR 151 CJEU

The Directive only protects “long-term” impairments.

28. ***Milkova v Izpalnitelen director na Agentsiata za privatizatsia i sledprivatizatsionen control***, C-406/15 [2017] IRLR 566 CJEU

A difference in treatment is only on grounds of disability if it is based on a criterion that is “inseparably linked” to disability.

29. ***Ruiz Conejero v Ferroser Servicios Auxiliares SA***, C-270/16, CJEU – pending

Does the Directive preclude absence management policies which treat the same as other employees disabled employees whose absence was caused by the disability?

**Race discrimination**

30. ***Finans A/S v Ligebehandlingsnaevnet, acting on behalf of Huskic***, C-668/15, 6 April 2017 CJEU

The prohibition on discrimination on grounds of ethnic origin does not apply to less favourable treatment of persons born outside the European Economic Area.

**Age discrimination**

31. ***Kratzer v R+V Allgemeine Versicherung AG*,** C-423/15, [2016] IRLR 888 CJEU

A claimant who claims to have been rejected on discriminatory grounds cannot be regarded as seeking “access to employment” if he is not actually seeking to be employed in the job.

32. **C**, C-122/15, [2016] IRLR 643 CJEU

National income tax legislation which levies a supplementary tax on pensions cannot be challenged under the Framework Employment Equality Directive as being age discrimination.

33. ***de******Lange v Staatssecretaris van Financien***, C-548/15, [2017] IRLR 278 CJEU

The Framework Employment Equality Directive’s prohibition on age discrimination applies to tax concessions relating to study costs.

34. ***Abercrombie & Fitch Italia Srl v Bordonaro***, C-143/16, CJEU – pending

Is Italian legislation allowing those under age 25 to be given on-call contracts unlawful age discrimination?

35. ***Salaberria Sorrondo v Academia Vasca de Policia y Emergencias***, C-258/15, [2017] IRLR 162 CJEU (GC)

A maximum age of 35 for recruitment as a police officer is a genuine occupational requirement and not prohibited age discrimination.

36. ***Fries v Lufthansa CityLine GmbH***, C-190/16, CJEU – pending

Is the compulsory retirement age of 65 for commercial airline pilots unlawful age discrimination?

**Discrimination on grounds of religion or belief**

37. ***Achbita v G4S Secure Solutions NV***, C-157/15 [2017] IRLR 466 CJEU (GC)

A prohibition on wearing an Islamic headscarf may be objectively justified indirect discrimination if it is part of a policy of religious “neutrality” in the workplace.

38. ***Bougnaoui v Micropole SA***, C-188/15 [2017] IRLR 447 CJEU (GC)

A prohibition on wearing an Islamic headscarf cannot be justified on the basis that customer preference is a genuine occupational qualification.

**Sex discrimination**

39. ***Ypourgos Esoterikon v Kalliri***, C-409/16, CJEU - pending

Is a minimum height requirement for police recruits indirectly discriminatory against women?

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