



ERRA: An Overview

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Agenda

- Background
- PIDA amendments
- Protected Conversations
- Capped compensation
- Political Dismissals
- Third Party Harassment
- Discrimination Questionnaires
- Caste Discrimination
- Early Conciliation
- Strict Liability in PI



Background

- "The main purpose of the Act is to encourage long term growth and simplify regulation."
- In fact a continuation of a set of employer-friendly reforms.
- Including:
 - Extension of Unfair dismissal qualifying period;
 - Costs orders increased;
 - Limiting the Industrial Jury;
 - Collective Consultation rights diminished;
 - ET fees from July 13.



Whistleblowing

- A new requirement (June 13) that the disclosure must be "in the public interest."
- A retreat from **Parkins v Sodexho**.
- What will be in the "public interest"? Discrimination at work?
- No longer strict requirement of good faith.
- Vicarious liability at last.



Protected Conversations

- An addition to the "without prejudice rule."
- A conversation about departure may be inadmissible even if no dispute exists.
- But not if the employer behaves "improperly."
- Meaning?



Cap on Compensatory Award

- 12 months' pay or the overall cap £76,574.
- Calculation of 12 months' pay?
- Excludes pension, benefits etc.
- Cf. "fines" for aggravating features - £100 - £5000 (payable to the State).



Dismissal for Political Opinions

- **Redfearn v The United Kingdom** [2013].
- CJEU - Lack of protection in UK law.
- 2 year eligibility abolished if "reason or principal reason for dismissal is, or relates to the employee's political opinions or affiliation."



Third Party Harassment

- S.40 EA 2010 repealed = no statutory tort.
- But the courts may find a way.
- See e.g. **Sheffield City Council v Norouzi** [2011] IRLR 897.



The Questionnaire Procedure

- S.138 EA 2010 – repealed.
- Replaced with ACAS guidance.
- But see e.g. **Meister v Speech Design Carrier Systems GmbH C-415/10**.



Caste Discrimination

- Section 97 ERRA amends Section 9(5) of the Equality Act 2010.
- But an enabling provision – not yet in force.
- See however **Tirkey v Chandok** (ET/3400174/13).



Early Conciliation

- From 6th May 2014 ACAS Early Conciliation ("EC") compulsory.
- Pre-claim conciliation still available on an informal basis.
- A Claimant in the ET **must** first go through the ACAS EC service – it's mandatory. Claimant or Respondent can start it.
- Post-claim conciliation still exists – after ET1 issued.
- ACAS helpline 0300 123 1100.



EC (2)

- It is not the Conciliator's job to judge the merits of the claim.
- The ET1 form will need the unique reference number from the EC Certificate.
- If the number is missing from the ET1 the claim will be dismissed by the ET unless exceptions apply.



EC (3)

- 2 sets of amending Regulations already.
- The "stop the clock" provisions are likely to confuse unrepresented Claimants.
- Another obstacle? Or perhaps a new way to push negotiations the extra quarter mile?



PI Claims: strict liability no more?

- The thought given to it:
- 69.Civil liability for breach of health and safety duties
- 70.Estate agency work
- 71.Bankruptcy applications: determination by adjudicators
- 72.Abolition of Agricultural Wages Board
- 73.Unnecessary regulation: miscellaneous
- s.69: a return to 1897?



ERRA

- Concluding thoughts.


