



Nigel Harrison, Partner (left)

Born in the West Midlands, Nigel spent several years in industry working as a Mechanical Engineer before qualifying with Hatchers as a solicitor in 1998 specialising in employment law and personnel related matters.

In his spare time, Nigel's interests include tennis, fly-fishing, the great outdoors, and spending time with his young family.

Bill Lamplugh, Solicitor (right)

Since qualifying as a solicitor in 1973 Bill has worked in Shrewsbury dealing with a variety of legal work, including employment law, personal injury claims and civil litigation. After retiring as Managing Partner of another local firm of solicitors. Bill then joined Hatchers as a consultant solicitor working with the employment team, consolidating our expertise.

Bill is a keen scuba diver and enjoys walking in the countryside.

Employment Team Member

Nichola Gallen-Friend

Having grown up in Nottinghamshire and studied law at Aberystwyth, Nichola has now settled in Shropshire. Nichola started as a trainee at Hatchers in October 2008 and qualified as a solicitor with the firm in July 2010 working in the



Commercial and Employment Team dealing with employment matters.

Nichola enjoys socialising, going to musical theatre and travelling



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Welcome to the latest issue of our free employment law update. In this month's issue we look at:

FORTHCOMING LEGISLATION In general, the government introduces legislative changes twice a year. We provide an overview of the main changes effective for the next six months from April 2011. [[more...](#)]

CLAIMANT'S CONDUCT Tribunals can award costs against claimants on the grounds of their unreasonable conduct. A court has just said that any award of costs must broadly reflect the effect of the conduct. [[more...](#)]

THIS IS NOT A GAY PUB Workers are not allowed to be treated less favourably on the ground of their sexual orientation. A court said recently that a gay employee who resigned because gay clients were being treated less favourably, was also protected. [[more...](#)]

IN BRIEF The government has announced that it will not extend the right to request time off for training to employees working in organisations with 250 or fewer employees. [[more...](#)]

Meet our Employment Team
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Our specialist employment team can provide you with practical advice upon how this complex and rapidly changing area of law affects you.

- Recruiting staff
- Disciplinary and grievance procedures
- Employment tribunals
- Unfair dismissal
- Redundancy
- Compromise agreements
- Equal pay
- Employment policies and handbooks
- Drafting and reviewing contracts of employment
- Family friendly rights
- Handling disciplinary matters fairly
- Discrimination
- Harassment and bullying
- Company takeovers and their effect on the employment relationship

FORTHCOMING LEGISLATION

In general, the Department for Business, Innovation and Skills introduces legislative changes twice a year – April and October. The idea is to make it easier for employers (and employees) to keep abreast of the changes. The following are effective from April 2011.

We will publicise the changes that become effective in October 2011 in our September 2011 edition of HReSource.

Additional paternity leave

3 April

Fathers of babies born or matched for adoption from 3 April have the right to take up to 26 weeks' leave (instead of the current two weeks) to care for the newborn.

To qualify, they must be employees who have worked for the same employer for 26 weeks at the start of the 15th week before the child was born or matched for adoption.

This new right is also available to employees who are not the father but who will be responsible for bringing up the child and are married to, or are the same sex civil partner of, the child's mother.

Increase in rates of statutory maternity, paternity, adoption pay and sick pay

3 April

The standard rate of statutory maternity, paternity and adoption pay increases from £124.88 to £128.73 per week.

The rate of statutory sick pay will increase from £79.15 to £81.60 per week.

Public sector equality duty

6 April

Under section 149 of the Equality Act 2010, public authorities have to have "due regard", under a general duty, to combat discrimination and eliminate other forms of discrimination when carrying out their functions. They also have to comply with a set of specific duties, aimed at helping public bodies meet the requirements under the general duty.

Positive action

6 April

Under section 159 of the Equality Act, employers are allowed to treat individuals with a protected characteristic more favourably than others in connection with recruitment or promotion.

This applies only to candidates of equal merit and the treatment must enable or encourage an individual to overcome or minimise a disadvantage or participate in an

activity where they are under-represented in that activity.

Right to request flexible working

6 April

Parents of children under 18 (previously under 17) have the right to request flexible working. The government is planning to extend the right to all employees and will be publishing a consultation paper shortly.

Default retirement age abolished

6 April

The default retirement age comes to an end in October 2011, with transitional provisions applying from this April. From that date, employers have to justify the use of a compulsory retirement age by showing that it is a proportionate means of achieving a legitimate aim.

Annual limit on economic migration

6 April

The government has announced an annual limit of 20,700 visas for skilled workers applying through Tier 2 of the points-based system, as well as 1,000 visas under a new exceptional talent route.

Employers will be required to apply for a certificate of sponsorship for a specific post if they wish to bring someone to the UK (as opposed to an annual allocation), unless the vacancy attracts a salary of more than £150,000.

Extra bank holiday

There will be an additional bank holiday on Friday 29 April 2011 to mark the royal wedding.

[\[Back to contents \]](#)

CLAIMANT'S CONDUCT

There are a number of grounds on which tribunals can award costs against claimants, one of which is the claimant's unreasonable conduct. In **Yerrakalva v Barnsley Metropolitan Borough Council**, the Employment Appeal Tribunal (EAT) said that although there does not have to be a precise causal relationship between the unreasonable conduct and the costs claimed, any award of costs must broadly reflect the effect of the conduct.

What happened?

In August 2005, Ms Yerrakalva brought a claim of disability discrimination following an accident at work which resulted in pain and restricted movement in her neck and spine.

Due to a number of complications, it was August 2007 before a date for a pre-hearing review (PHR) could be arranged, which was adjourned part-heard. Due to the judge's subsequent illness, it was then decided that the case would have to be completely reheard but before that happened, Ms Yerrakalva withdrew her claim.

Her former employer applied to the tribunal for an order for costs. And the judge agreed, not because the claim was misconceived (it had not been heard, so the merits of the case were not clear), but because it transpired that Ms Yerrakalva had told two lies in the course of the abortive PHR in August 2007.

The first concerned an application for benefits in which she had claimed that, prior to the onset of her disability, she had led a very active life which included playing lots of sports, but that she could no longer do these activities as a result of her injuries. Yet at the PHR, she admitted she had barely played sport before the accident. She had also said she was not pursuing a personal injury claim when, in actual fact, she was.

The judge concluded that she was guilty of an "abuse of process" and ordered her to pay 100 per cent of her former employer's reasonable costs which were to be assessed in the county court.

The EAT accepted that although Ms Yerrakalva's conduct was unreasonable, the judge was still required to take into account "the nature, gravity and effect" of that conduct when deciding whether to make an award and if so, for how much.

Relying on the case of **McPherson v BNP Paribas**, the EAT said that "while there does not have to be a precise causal relationship between the unreasonable conduct and the costs claimed, any award of costs must, at least broadly, reflect the effect of the conduct in question. That indeed inevitably follows from the principle that the purpose of an award of costs ... is compensatory and not punitive".

The EAT also added, in passing, that there should be no general rule that withdrawal of a claim constitutes an acknowledgement that it was misconceived or that it automatically gave grounds for an award of costs.

[\[Back to contents \]](#)

THIS IS NOT A GAY PUB

The law against treating workers less favourably on the ground of their sexual orientation is well established. In **Lisboa v Realpubs**, the Employment Appeal Tribunal (EAT) said that a gay employee who resigned as a result of a strategy to encourage "straight" customers which led to gay clients being treated less favourably, was also protected.

What happened?

Mr Lisboa, an openly gay Brazilian man, applied for a job as assistant manager at a pub that had recently been taken over by Realpubs. During the interview, the new owners made clear that they wanted to transform the bar from a gay pub into a gastropub.

Shortly after he started work in December 2008, he was asked by the manager to display a board outside the bar saying "this is not a gay pub". Mr Lisboa objected and suggested a different form of words which was agreed.

The owners also initiated a new policy to seat non-gay customers in prominent places so they could be seen from outside the pub, and to have a more even balance of staff between the sexes as a result of which seven male staff members left or were sacked.

Mr Lisboa heard a director make a derogatory comment about his sexuality, refer to some gay customers as "queens" and comment that his fellow assistant manager "walked too camp".

After a few weeks in the job, he resigned claiming constructive wrongful dismissal. He cited two instances of direct discrimination - comments made about his sexual orientation; and the policy of making the pub less welcoming to gay customers which he had to cooperate with.

The tribunal agreed that the comments made to Mr Lisboa were offensive and that he had suffered a detriment on the ground of his sexual orientation, but did not agree that the company had followed a policy of making the pub unwelcoming to gay customers.

It said that his claim of constructive dismissal failed because although he had been subjected to a detriment, he had resigned as a result of a "mistaken perception that Realpubs was a homophobic organisation", and not because of the offensive treatment.

Relying on the case of **Wethersfield and Sargent**, the EAT concluded that, although this case was far more "nuanced" than Sargent, the tribunal had failed to ask itself the crucial question. That is, whether Realpubs "in advancing a legitimate policy of widening the appeal of the pub following its re-launch, implemented it in such a way that the old gay clientele was less favourably treated than the desired straight/family customer base on grounds of their sexual orientation."

Given the tribunal's findings of fact, the EAT concluded that gay customers were "plainly and unarguably" treated less favourably on the ground of their sexual orientation. Mr Lisboa's reason for resigning was prompted by unlawful discrimination against customers and his claim of constructive dismissal therefore succeeded.

[\[Back to contents \]](#)

IN BRIEF

The government announced recently that, following a consultation, it will not now extend the right to request time off for training to employees working in organisations with 250 or fewer employees.

It was due to have extended the right (currently only available to employees of large organisations) from April to small and medium-sized businesses.

It is not clear when, or if, this will now be introduced.

The consultation, which closed in September 2010, asked whether:

- The right should be repealed
- The right should be retained only for large organisations
- The right should be extended to small and medium sized organisations from April 2011 as planned
- The right, if retained for large organisations or extended, could be amended so it is less burdensome on employers who already train; and if this could be achieved in ways that do not increase complexity or reduce legal certainty.

Further Education, Skills and Lifelong Learning Minister, John Hayes said, when announcing that the right will not now be extended:

“It is vital to the economy and individuals that everyone has access to the training they need. That is why we are investing in apprenticeships, protecting adult and community learning, and freeing colleges to respond to local needs.

“But it is vital that the right balance is struck between support for training and the need to minimise the burden of regulation for smaller companies.

“We have delayed implementation to allow further, thorough discussion, scrutiny and evaluation.”

[[Back to contents](#)]

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