

Rural news - winter edition: employment update

30 NOVEMBER 2017

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Employment status claims and tribunal fees

In the last quarter we have seen a number of important decisions on the two key areas of employment status and tribunal fees. Although not directly relating to rural employers, they will nevertheless likely have an effect in this sector.

Firstly, there has been an abundance of decisions in the employment tribunal on employment status involving well-known brands such as Uber, Pimlico Plumbers and Addison Lee, which have been heavily reported in the media. Appeals are ongoing but these decisions have all found that individuals who have been classed as 'self-employed' are in fact 'workers' although not full blown 'employees'. Worker status gives individuals certain rights, such as to the national minimum wage, paid holiday and probably pension contributions through auto-enrollment. Workers are not, however, protected from being unfairly dismissed and are not entitled to certain 'family friendly' rights.

Separately, the Supreme Court has found that the employment tribunal fees regime is unlawful and so there are now no fees payable to commence tribunal proceedings. The barriers for (in particular, low paid) workers to bring claims are therefore reduced. The number of claims being brought has already risen dramatically.

The combined effect of these decisions is that rural employers may face more claims overall and, in particular, claims brought by individuals, most likely on termination of the engagement, seeking back payments for holiday and other alleged entitlements. Rural employers should check that arrangements with casual workers or contractors are appropriate, and should take steps to regularise the position if necessary.

National minimum wage for 'sleep in' shifts

There has been a decision of the Employment Appeal Tribunal which provides clarity around the factors relevant to whether the National Minimum Wage ('NMW') is due to individuals who have 'sleep in' shifts. For rural employers this could include those individuals who are required to sleep at a property to protect premises or oversee livestock. In certain cases, these workers may be entitled to be paid the NMW for those hours where they are 'on duty' albeit asleep. For relatively low paid workers (with or without accommodation provided), if this sleeping time is 'working time', the pay they are entitled to could be substantially more than they are receiving at present. Failure to pay the NMW can result in a penalty of up to £20,000 in addition to any arrears of pay, and the employer can be publicly named on a list of offenders.

The factors identified were: the reason for the employment (e.g. regulatory requirements to be on site); the level of freedom the individual has to leave the site at any time during the shift; and the degree of responsibility undertaken by the employee on shift (e.g. do they merely need to call the emergency services or are they expected to deal first hand with any issues with animals etc). In each case the factors need to be weighed up to determine whether or not the sleeping time is also 'working time' but the case provides a more helpful framework than existed previously. It also serves as a reminder that rural employers need to carefully consider whether or not employees need to be paid for additional hours if they remain on site overnight.