

Report to Personnel Committee on ‘Casual Workers – reducing the risk to the Council’.

Appendix A

Ex Employee “X” v West Berks Council Review on merits of claim to the Employment Tribunal

Summary of legal advice received from external solicitors

Introduction

X was engaged by the Council as a casual worker. X is claiming unfair dismissal, breach of contract, breach of the working time regulations and a redundancy payment. His claim depends firstly on whether he has employment status and secondly if he has continuity of service.

1. Employee status

X was engaged directly by the service, rather than through an agency. There is no scope to argue that he is employed by an agency. The correct respondent to the claims is therefore the Council.

He was paid through the pay roll with tax and NI deducted at source, he was an employee, rather than an independent contractor or freelance worker.

X was not able to substitute another individual if he did not attend work. He had regular working hours. A letter advised X that if he works any additional hours, these should be agreed in advance. There is no suggestion from this letter that these arrangements are in place for a limited fixed period but rather this is part of a steady, ongoing relationship.

X attended staff meetings. It is assumed that he would have contacted the service if he was unable to attend due to ill health.

Tribunals can use a generous interpretation of employee status to ensure that legal protection is afforded to individuals. I would suggest on the basis of the information that we have, that X had employee status.

2. Continuity of service

X states his employment ended without notice on (DATE). There is a legal presumption in favour of continuity of service. Assuming that he worked regularly during the year, the key issue is whether there was one week’s break in service (lasting from Sunday to Saturday) during this time. There are specific provisions as to what constitutes a week’s break in service.

There could be an agreement that he would be provided with work at a future date and this could be considered to create an overarching ‘umbrella’ contract. .

On the basis of the information that we have, it seems likely that X will have continuity of service.

3. Claims

3.1 Unfair dismissal and notice

Assuming he can establish employee status and continuity of service, as explained above, his claim for unfair dismissal is likely to be successful as no procedure was followed in relation to his dismissal. *HR comment: the maximum compensation for unfair dismissal is £84,000.*

He would be entitled to a notice payment and a redundancy payment, if he can establish two years' continuous employment.

3.2 Sick pay

If he is able to establish that he was an employee, the Tribunal may need to determine what his terms and conditions of employment are. In the absence of any express terms, he could argue that the JNC terms and conditions of employment ("the Green Book") would apply to his contract of employment. Under the Green Book he would be entitled to contractual sick pay.

Even if he does not convince the Tribunal that he should have been engaged on Green Book he should have been paid Statutory Sick Pay as an employee.

The amount owed to him would depend on how many days' sickness he took and whether he complied with the reporting procedures of the school.

3.7 Other claims

The Tribunal could decide to award him damages for failure to provide a statement of particulars of employment, if he can establish that he is an employee.

4. Conclusion

Based on the information that we have received, he is likely to be able to establish that he is an employee with over one year's service. **He would therefore be able to pursue his claim for unfair dismissal and the other claims in the Employment Tribunal.**