

# Employment Newsletter

*November 2019*

BACKHOUSE  
JONES

## Criminal records disclosure

The Government has proposed to amend the rules on the information that must be disclosed to employers. The changes would mean that less serious offences of more than four years will not have to be disclosed once the rehabilitation period has ended. The period for which sentences of four years or less and community sentences have to be disclosed will be reduced. The changes will not apply to those working with children or vulnerable adults, national security roles or positions of public trust.

## Workplace rights after Brexit

The Government has published Guidance on what will change in relation to workplace rights in the event of a no-deal Brexit. The only changes that the Guidance identifies is in relation to employer insolvency and European Works Councils (EWCs). Where a UK employer becomes insolvent while it has UK employees working in an EU country, dependant on the rules of that country, the employee may not be protected. Following Brexit, requests for new EWCs will not be accepted however the Guidance states that it “would encourage businesses to continue to allow UK workers to be represented on EWCs on a voluntary basis”.

## Redundancy protection

The Government held a consultation on extending redundancy protection for pregnant women and new parents returning from maternity, adoption or shared parental leave and has now published its response. Currently women on maternity leave must be offered suitable alternative employment in preference

to other employees. It is proposed that this protection will be extended so that it begins at the point that the employer is notified of the employee’s pregnancy and will last 6 months after the end of her maternity or adoption leave. A similar protection may also apply to those on shared parental leave but how this will work in practice is still being developed. There is not yet a date for implementation of these changes.



## More than just friends?

We all want our employees to get along but what happens when they really get along and become more than just friends.....

Interactions between employees, whether it is friendships or romantic encounters, can affect productivity and the company dynamic as a whole. This article explores the issues and highlights the warning signs that operators need to be aware of.

Given the amount of time that employees spend with each other in the workplace it is likely if not inevitable that some personal or intimate relationships develop. In the majority of cases, personal relationships are normal and will not present a problem but at the same

time, operators need to be alive to the possible compliance repercussions that can take place if personal liaisons escalate out of control.

Traditionally, workplace relationships have been frowned upon with the view that they evoke distractions which are detrimental to productivity. In addition, relationships whether intimate or not can induce a gossip culture amongst co-workers.

However, recent research has found that workplace friendships can actually be healthy for both employees and the company. In today's economy, people spend greater times at work and the line between home and work is thinner than ever. In fact, contrary to popular belief, it is now the opinion that employees are happier when they have friends at work which in turn makes it is easier to get through the day and ultimately leads to increased productivity and a decreased staff turnover.



Although much trickier, a workplace relationship can be viewed in a similar way. Employers should ensure that all employees are familiar with the company's stance on workplace relationships and that operational managers are fully equipped to understand and know how to address issues in one or more of the following ways:

- A Workplace Relationship Policy. In light of the potential implications, we suggest a well written and informative Personal Relationships at Work policy is put in place to inform employees of the balance between their rights to a private life and the Company's right to protect its interests.
- Provide training. Consider offering courses for managers and supervisors focusing on romantic relationships between their employees.
- Grievance and Anti-harassment Policy's. There can be a thin line between workplace romance and possible sexual harassment so all employees should be made aware that inappropriate and unwanted conduct of a sexual nature is not acceptable. This can also be an issue when relationships fail.
- Employers may want to include a guideline in their policy that requires employees to inform management of any close personal relationships between colleagues so that they can review the situation in relation to possible interference with their work. In such circumstances, employers may find it necessary to explore the possibility of one party being moved to a different area of work or location.

Be aware that the dismissal of an employee simply for having a personal relationship at

work is likely to be unfair, as well as possible discrimination on the grounds of sex.

Such situations should be handled with care and sensitivity in the interests of all concerned and employers should ensure that any approach or actions are not unfair or discriminatory. Please speak to a member of our employment team if you require further advice.

## **Covert Surveillance of Employees - Lopez Ribalda and others -v- Spain**

The Grand Chamber of In the European Court of Human Rights (ECHR), has held by a majority (14 to 3), that covert surveillance of employees under suspicion of theft did not breach their right to respect for private life under Article 8 of the European Convention on Human Rights.

### **The Facts**

From March 2009, the manager of a Spanish Supermarket chain identified inconsistencies between the stock level and the sales figures. Thereafter, he identified losses of up to €24,614. An internal investigation was launched which involved the installation of both visible and hidden CCTV cameras. The visible cameras were directed towards the entrances and exits of the supermarket, whilst there were hidden cameras placed at a certain height and directed towards the checkout counters. The supermarket staff were informed only of the presence of the visible cameras on account of the management's suspicions of theft.

In June 2009, the CCTV footage revealed theft of goods at the tills by a number of employees. 14 employees were consequentially summarily dismissed, 5 of which were the Claimants in

this ECHR case. Following their dismissal, the Claimants brought a claim for unfair dismissal before the Spanish Employment Tribunal, objecting in particular to the use of covert video surveillance. They argued that it breached their right to protection of their privacy and further, that any recordings obtained by such means should not be admitted in evidence in the proceedings. The Spanish Supermarket relied on the covert surveillance to defend the claims and argued that the dismissals were fair.

Ruling in favour of the Supermarket, the Claimant's arguments were rejected by the Spanish Employment Tribunal and the High Court of Catalonia, both ruling the footage had been lawfully obtained and was justified by the existence of suspicions of misconduct and proportionate because the recordings were limited, in time and space, to what was necessary for the purpose of verifying the suspicions.

Following a series of appeals, the case appeared before the ECHR in January 2018. The court ruled in favour of the Claimants and the Supermarket was criticised for failing to strike a fair balance between the rights of those parties involved. The ECHR did not agree that the recordings were limited, but stated that it had been in broad scope. However, the Spanish Government requested that the ECHR should re-examine the complaint under Article 8 of the Convention, which is when it was referred to the Grand Chamber.

Three of the 17 judges decided there was a failure by the Court previously to strike a fair balance between the rights of the employee and employer. The judges felt employers of public institutions, such as supermarkets, would be granted the unlimited use of covert

video-surveillance without providing enough legal safeguards to protect their employee's data, which is collected and used unknowingly. The judges commented on the growing influence technology has on our society and felt a ruling in favour of covert monitoring would only make it legally easier to intrude and violate rights of employees, rights such as Article 8.

However, the majority ruled otherwise. While the majority Judges (14 of 17) stated they cannot accept the proposition that, generally speaking, the slightest suspicion of misappropriation or any other wrongdoing on the part of employees might justify the installation of covert video-surveillance by the employer, the existence of **reasonable suspicion** that **serious misconduct** has been committed and the extent of the losses identified in the present case may appear to constitute weighty justification. It was also commented that employees should have a limited expectation of privacy at work on a supermarket floor and found that the Supermarket had taken steps to confine the circulation of the recordings.

Further, it was considered that the Claimants had failed to pursue other remedies which were available to them as provided for in the Spanish Data Protection Act outside of Employment Tribunal's jurisdiction, namely, a complaint to the Data Protection Agency of a failure by the employer to fulfil its obligation to provide prior information i.e. inform them that they were being recorded.

### Commentary

The important lesson to take from this case is that when considering covertly monitoring your employees, operators must take into consideration whether its use is justified. The

benchmark set by this case is that the employer must have a reasonable suspicion of serious misconduct. Additionally, it is important to consider proportionality and strike a fair balance between the employee's right to privacy and achieving verification of your suspicions.

The above is obviously different to the use of non-covert CCTV which many operators install on/in their vehicles and around their depots, and which employees are made aware of.

Furthermore, if you operate in a private area, or run your business in a public environment with few accessible areas to the public and employees, the level of privacy your employees can expect is going to be greater, and covert monitoring is more likely to be regarded as an unlawful intrusion. This is obviously comparable to those employers operating in a place which is very public by nature, such as a supermarket.

**FOR ALL RELATED ENQUIRIES, PLEASE CONTACT OUR EMPLOYMENT TEAM ON 01254 828300**

**Please note: This publication does not constitute legal advice**



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