

← entitled to the NMW if they act as volunteers or provide their services as "voluntary workers". On the other hand, "workers" are entitled to the NMW. This category includes employees and those who have agreed to provide services personally under a contract.

As a general rule of thumb, there is a risk that interns will be viewed as workers, and be entitled to the NMW, if they receive any pay or benefit in kind for their work, or have an obligation to attend work or perform certain services

→ SEE LINKS ①②③④⑤



**TRIBUNALS**

# Redundancy options and maternity

**The right to be offered alternatives to redundancy during maternity leave is qualified by this case. By Charles Wynn-Evans**

Employees on ordinary or additional maternity leave, who are affected by a redundancy exercise, are automatically entitled under regulation 10 of the Maternity and Parental Leave Regulations 1999 to be offered any alternative vacancy available. This effectively gives maternity leave staff precedence over other employees also at risk of redundancy, even if they are better

qualified for the vacancy. Breach of this entitlement makes the dismissal for redundancy of employees on maternity leave automatically unfair under section 99 of the Employment Rights Act 1996.

Employers deciding whether an employee who is on maternity leave during a redundancy exercise has the automatic right to an alternative vacancy need to consider all aspects of the job on offer - including its function, remuneration, location and suitability. There are two conditions on the right to be offered an alternative position:

- the work offered must be both suitable for the employee on maternity leave and appropriate for her when she returns to work; and
- the contract for the new job must not be "substantially less favourable" than her previous contract.

In *Simpson v Endsleigh Insurance Services and others*, the employer closed down most of its retail outlets (including the claimant's workplace in London) and relocated operations

to several call centres, while the claimant was on maternity leave. She was invited to apply for a position at Cheltenham's call centre but failed to do so. She argued that she should have been offered a new insurance consultant role in Cheltenham, instead of the employer simply sending her information on vacancies and inviting her to reply.

The employer accepted that the new position was suitable in terms of function, but not for the purposes of the maternity regulations because of its different location and altered shift pattern. Because of this, it maintained that the automatic right to be offered the position did not arise. The tribunal accepted this.

The EAT held that the two conditions on the right to an alternative vacancy should be read together when deciding if there is a suitable vacancy. Ultimately it was for the employer, knowing what it did about the employee, to decide if a vacancy was suitable.

→ SEE LINKS ⑥⑦⑧

## LEGAL CHECKLIST

**JP Morgan Europe v Chweidjan**

An executive director argued he had received a reduced bonus, and had been selected for redundancy, as a result of a back injury. The case shows why disability-related discrimination is being replaced by "discrimination arising from disability" in the Equality Act 2010.

**Ministry of Defence v Wallis and another**

The EAT agreed that a tribunal had jurisdiction over unfair dismissal claims brought by two employees working abroad. Their husbands' postings abroad "piggybacked" them into the expatriate category established in *Serco v Lawson* (2006 UKHL 3).

**McCormack v Hamilton Academical Football Club**

The duty of mutual trust and confidence requires employers to notify employees of any misconduct issues. The court held that McCormack had been wrongfully dismissed as the employer had not kept him fully informed of perceived deficiencies in his conduct.

**Jhal v Commission for Equality and Human Rights**

The employer failed to inform an employee on maternity leave of a job vacancy. The EAT upheld the tribunal's judgment that this was a genuine administrative error, rather than unfavourable treatment.

→ SEE LINKS ⑨

## LINKS & NOTES

① **Louise Gibson** is a solicitor at Howard Kennedy: [Lgibson@howardkenner.com](mailto:Lgibson@howardkenner.com) For a longer version of this article go to [/Interns](#)

② **PM news** CIPD calls for training wage for interns: [/Interns610](#)

③ **PM blog** Insisting on Intern wage is risky (Iain Mackinnon) [/IM810](#)

④ **CIPD policy** Internships: pay or not to pay? [www.bit.ly/Internpay](http://www.bit.ly/Internpay)

⑤ **Institute of Public Policy Research** 'Why interns need a fair wage' [www.bit.ly/ippfrfair](http://www.bit.ly/ippfrfair)

⑥ **Charles Wynn-Evans** is partner at Dechert: [charlynn-evans@dechert.com](mailto:charlynn-evans@dechert.com)

⑦ **Simpson v Endsleigh Insurance Services** Case ref EAT/0544/09

⑧ **PM law** What rights do mothers have when redundancies loom? [/maternity69](#)

⑨ **PM law** Further details at [/case-checklist](#)

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⑩ **CIPD resources** Employment law qualifications [www.cipd.co.uk/qualifications](http://www.cipd.co.uk/qualifications) A range of updates is available on subscription [www.cipd.co.uk/manual](http://www.cipd.co.uk/manual)



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