

In This Edition

- An ET awards £24,000 for pregnancy discrimination after a pregnant employee's fixed-term contract was ended, despite prior agreement to an extension, and the employer could provide no adequate explanation.
- The Court of Appeal have ruled that the *Simmons v Castle* 10% uplift to general damages in civil claims does apply to personal injury and injury to feelings awards in employment tribunals.
- BSI, the business standards company, has launched a new standard for employers to provide guidance for good practice on valuing their employees through diversity and inclusion.
- Latest BEIS national statistics on trade union membership show that around 6.2 million employees in the UK were union members in 2016, a decrease of 275,000 (4.2%) from 2015.

Termination of fixed-term contract results in £24,000 award for pregnancy discrimination

In [Lewandowski v Bradford District Apprenticeship Training Academy](#), Lewandowski (L) was employed by the Apprenticeship Training Agency on a fixed term contract until 31 March 2016. Bradford Council funding of the Academy was to end on 31 March 2016. In January 2016, L disclosed she was pregnant to her colleagues. Bradford College proposed taking over the Agency. At a board meeting concerning the takeover in January 2016, cost reductions were discussed and L's pregnancy was disclosed. Before and after the meeting, L was offered and agreed to a 12-month extension of her contract to 31 March 2017. In February 2016, L was called into a meeting and told that despite the offer and her acceptance of an extended contract until 31 March 2017, the position had now changed because her salary could not be afforded and her employment would terminate on 31 March 2016.

An ET upheld L's claim for pregnancy discrimination and automatic unfair dismissal. The employer was unable to explain what changed from the certainty of an agreed 12-month extension of the contract in January 2016 to the February 2016 meeting when L was informed her contract was to end because it was alleged that her salary could not be afforded. The financial circumstances did not support that argument since L had been offered a contract extension when the funding position was clear. The reason for the change of heart was that the Board knew L was pregnant and did not want to honour the contract. L was dismissed because she was pregnant. Given the findings that it was a 'discriminatory' dismissal, it was also an automatically unfair dismissal. L was awarded £9,130 for loss of earnings, £15,600 for injury to feelings and £435 for ET fees.

Simmons 10% uplift applies to discrimination awards

The Court of Appeal in *Simmons v Castle* held that, from 1 April 2013, the level damages in civil claims for pain and suffering, loss of amenity, physical inconvenience and discomfort, social discredit, or mental distress, should increase by 10%. Decisions in the EAT have been divided as to whether the *Simmons v Castle* 10% uplift should be applied to personal injury and injury to feelings awards under the Equality Act 2010, as S.124 (6) states that the compensation awarded should correspond to the amount which could be awarded by the county court.

The Court of Appeal have resolved the matter in [De Souza v Vinci Construction \(UK\) LTD](#) by ruling that the *Simmons v Castle* 10% uplift does apply to personal injury and injury to feelings awards in the ET. The language of S.124(6) means is that the amount awarded by an ET in respect of a particular head of loss should be the same as if an award in respect of the identical loss had fallen to be made in the County Court, i.e. the two amounts should "correspond". The current Judicial College Guidelines for psychiatric injury incorporate the uplift, and the President of the Employment Tribunals should publish guidance uplifting to the Vento injury to feelings bands; pending guidance, ETs can do their own adjustment, which need not be mathematically precise.

British Standard for diversity and inclusion launched

BSI, the business standards company, has launched a new standard for employers to provide guidance for good practice on valuing their employees through diversity and inclusion. The standard, [BS 76005 Valuing people through diversity and inclusion – code of practice for organizations](#), provides recommendations for undertaking, reviewing, assessing a competent and principled approach to diversity and inclusion in the workplace. The recommendations cover people management and development, and the evolution of more inclusive policies, procedures, practices and behaviours within organizations supporting diversity. The building of productive relationships with customers, clients or people within communities is also a key recommendation.

Lowest rate of trade union membership recorded since 1995

Latest BEIS national [statistics](#) on trade union membership show that around 6.2 million employees in the UK were union members in 2016, a decrease of 275,000 (4.2%) from 2015. The decrease represents the largest annual fall recorded since the series began in 1995. Current membership levels are well below the peak of over 13 million in 1979. The proportion of employees who were trade union members fell to 23.5% in 2016, from 24.7% in 2015, the lowest rate of trade union membership recorded since 1995, i.e. a decrease of 8.9%, from 32.4%. The proportion of female employees who were in a trade union was around 25.9% in 2016, compared with 21.1% for male employees.

Content

This update provides summary information and comment on the subject areas covered. Where employment tribunal and appellate court cases are reported, the information does not set out all of the facts, the legal arguments presented and the judgments made in every aspect of the case. Click on the links to access full details. If no link is provided, contact us for more information. Employment law is subject to constant change either by statute or by interpretation by the courts. While every care has been taken in compiling this information, SM&B cannot be held responsible for any errors or omissions. Specialist legal advice must be taken on any legal issues that may arise before embarking upon any formal course of action.