

# no tax uplift

## No tax uplift for maximum award

The maximum compensation that an Employment Tribunal can award for unfair dismissal is set down in legislation. This statutory limit is subject to review and is normally increased on 1 February each year.

There are two parts to an award of compensation for unfair dismissal. Firstly, the basic award, which is similar to the calculation for a statutory redundancy payment and cannot be more than £12,000. Secondly, the compensatory part, as the name suggests, is calculated by reference to the employee's losses that have resulted from the dismissal. These losses can include wages, loss of benefits, pensions etc for the period that the employee is out of work following the dismissal. However, there is a cap which currently stands at £68,400.

The employee may well have losses well in excess of this cap, yet this is the maximum they can be awarded if they bring a claim for unfair dismissal. However, this does not take into account the income tax due on the award. If the Employment Tribunal makes an award of £68,400, the actual sum the employee will receive will be less due to the fact the employer will be under a legal obligation to deduct tax from the payment.

Taking this into account from the employee's point of view the compensation cap is even lower than that which the government has set. This is a consequence that a number of Tribunals have tried to avoid by means of applying a 'grossing up' exercise to the award. In effect, the Employment Tribunal calculates what sum it has to award to the employee so that after tax has been deducted the employee will receive the maximum compensation.

In the recent case of *Hardie Grant London Ltd -v- Aspden*, this practice was challenged. The case involved the managing director of Hardie Grant London who had

resigned and claimed constructive dismissal after comments made by her CEO about her came to her attention. She was in a highly paid role and was able to show considerable losses.

The Employment Tribunal, taking into account her tax liability, 'grossed up' the amount due and awarded her compensation of £87,166.67. In reaching this figure, it calculated that after the employer had paid the necessary sum to the HMRC, the claimant would then receive the maximum unfair dismissal compensatory award which was at the time £65,300. The employer argued that in calculating compensation, the Employment Tribunal should not 'gross up' the award and the case proceeded to the Employment Appeal Tribunal.

It was held that the Employment Tribunal could 'gross up' compensation awards but it had to do so before applying the statutory limit. If the losses of the employee were £40,000, the Tribunal could gross up the sum to, say, £44,000, if that would in effect result in the claimant receiving the sum of £40,000 after the employer has deducted tax. However, the grossing up could not uplift the award above what is set as the statutory maximum. It followed that, in this case, the award should have been limited to £65,300. The Tribunal did not have power to award more.

### Comment

The decision highlights the restrictions on Employment Tribunals and their power to award compensation for unfair dismissal. It has to be remembered though that in relation to discrimination claims, there are no such limits on compensation, which makes discrimination claims appear much more attractive to claimants who have significant losses.

