CASE ALERT: NO IMPLIED DUTY TO DISCLOSE ALLEGATIONS OF MISCONDUCT IN ABSENCE OF EXPRESS CONTRACTUAL OBLIGATION

Date: 29 July 2015

Labor, Employment and Workplace Safety Alert

By: Paul Callegari

WHAT HAPPENED?

In *The Basildon Academies v Amadi*, the Employment Appeal Tribunal (the "**EAT**") decided that an employee was not under an implied duty to disclose allegations of misconduct to his employer where there was no express contractual obligation to do so.

Mr Amadi was employed as a part-time tutor by The Basildon Academies (the "**Academies**") and, during his employment, he accepted a zero hours contract to work at a different college as well (the "**College**"). However, Mr Amadi was suspended by the College following an allegation by a female pupil that he had sexually assaulted her. He was arrested and bailed by the police. It is not known if Mr Amadi was charged, but no prosecution took place.

Mr Amadi's employment contract with the Academies (the "**Contract**") obliged him to (i) inform the Academies if he took up other employment and (ii) disclose his own misconduct where it occurred during his employment, or in circumstances set out in additional documentation. However, Mr Amadi did not inform the Academies of his employment by the College or the allegation of sexual assault. Once the Academies discovered this, Mr Amadi was suspended and dismissed with immediate effect after a disciplinary hearing for two counts of gross misconduct.

The EAT concluded that Mr Amadi was not subject to an express obligation in the Contract to disclose his misconduct, as the express term in the Contract only related to his employment with the Academies and the alleged misconduct had occurred during his employment elsewhere. Whilst the Contract stipulated that disclosure of misconduct was required in certain other circumstances as set out in additional documentation, the Academies failed to present these documents as evidence to the Employment Tribunal so it was unable to establish that Mr Amadi had an express contractual obligation to make the disclosure. Furthermore, although the EAT acknowledged that Mr Amadi was under an implied duty of fidelity to the Academies, it decided that this duty did not extend to requiring an employee to disclose his own misconduct to his employer in the absence of an express contractual term.

The EAT upheld the Employment Tribunal's decision that Mr Amadi had not breached the Contract by failing to disclose his alleged misconduct to the Academies and that the Academies decision to dismiss was outside the range of reasonable responses. Therefore, Mr Amadi was unfairly dismissed (although the EAT added that he

©2005-2026 K&L Gates LLP. All Rights Reserved.

made a 30% contribution to his dismissal by not disclosing his employment with the College, which was in breach of the Contract).

WHAT DOES THIS MEAN?

The EAT made clear that its decision was fact specific and not necessarily of general application, especially as the outcome of this case may have been different if the employer had provided evidence of the additional documentation that it sought to rely on to impose an express duty on Mr Amadi. However, this case does support the view that an employee is not under a general duty to disclose their own misconduct to their employer, unless an express provision to do so exists in their employment contract. There remains an exception to this principle where an employee owes fiduciary duties to his employer, such as a director or senior manager.

WHAT SHOULD WE DO?

Employers should incorporate clearly-drafted terms into their employment contracts which oblige employees to disclose their own misconduct. This requirement should be drafted widely enough to cover allegations of impropriety made outside of its own employment, particularly when employing part-time or atypical workers who are likely to have more than one job. When such disclosures of information are made, employers must ensure that any sanctions imposed on the employee are reasonable and that the company's disciplinary procedures are followed.

KEY CONTACTS



PAUL CALLEGARI
PRACTICE GROUP COORDINATOR - LABOR, EMPLOYMENT, AND WORKPLACE SAFETY AND MANAGING PARTNER, LONDON OFFICE

LONDON
+44.20.7360.8194
PAUL.CALLEGARI@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.