

## 2 Sleep-in care workers not entitled to national minimum wage while asleep

The Court of Appeal in *Royal Mencap Society v Tomlinson-Blake; Shannon v Rampersad* and another controversially held that a "sleep-in" care worker in residential accommodation was not entitled to the national minimum wage while sleeping. The decision was big news in the care sector but also has an impact on other sectors where staff are allowed to sleep at work until called on, for example in some emergency services and security roles.

## 3 Careful thought required in relation to requests to postpone disciplinary hearings

*Talon Engineering Ltd v Smith* highlighted the potential danger for employers in proceeding with a disciplinary hearing when the employee's chosen companion is unavailable - even where the requested postponement falls outside the period allowed for under the statutory right to be accompanied. In this scenario, the Employment Appeal Tribunal essentially warned employers that they must bear in mind two distinct issues – the statutory right to be accompanied and the separate right not to be unfairly dismissed, which depends on the reasonableness of the employer's actions.



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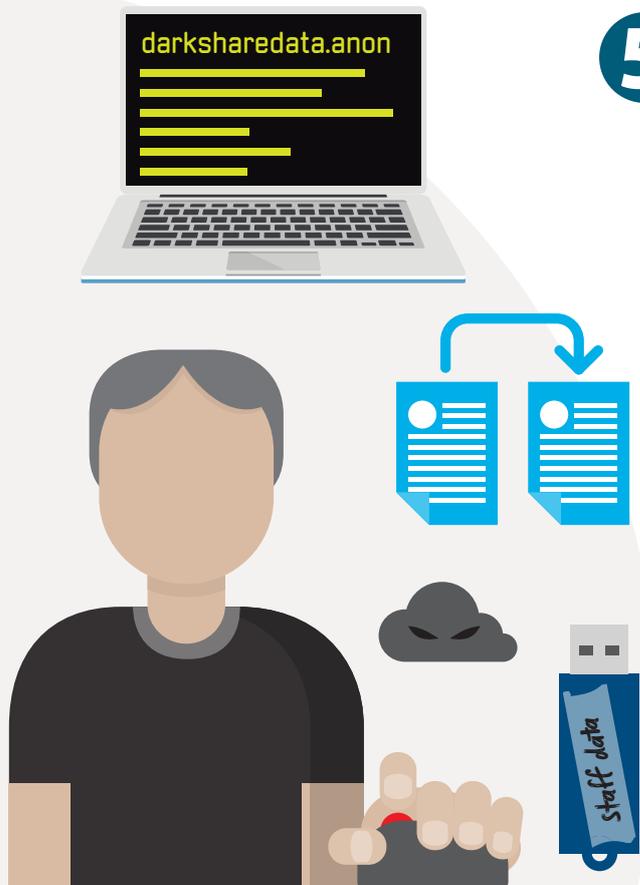
## 4 Employer liable for managing director's Christmas party violence

Could an employer be liable for a managing director's random act of violence at a post-Christmas-party drinking session? Yes, said the Court of Appeal in *Bellman v Northampton Recruitment Ltd*. The managing director was still acting in his role with the company, having organised and paid for staff to continue drinking on the same night as the sanctioned workplace event. The Court accepted that the assault arose out of his misuse of his position.



## 5 Employer's vicarious liability for data protection breaches

In *WM Morrison Supermarkets plc v Various claimants*, the Court of Appeal held that the employer was liable for the criminal actions of an ex-employee who disclosed the personal data of staff online. The case arose after a disgruntled former IT auditor with the company sent the personal data of around 10,000 staff to newspapers and posted it on a file-sharing website. The Court ruled that there was a sufficient connection between the position in which the IT auditor was employed and his wrongful conduct for the employer to be liable. This was despite the supermarket's security steps and the criminal nature of the IT auditor's actions.



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