Effective date of termination is end of employee's notice period

In the recent case of Wedgewood v Minstergate Hull Ltd the Employment Appeal Tribunal (EAT) considered the question of when the effective date of termination takes place when, after a period of notice has been agreed or stipulated, an employee is not required to work out all or part of their notice period.

In this case, the employee was given notice that his employment would terminate on 1 December 2008. He asked the employer if it would be possible for him to leave earlier and by a letter dated 26 November 2008 the employer wrote “I write to confirm that you can be released today and will still be paid up to and including your notice period date Monday 1 December 2008”. The employee subsequently submitted a claim on 28 February 2009. The employer claimed that the claim was submitted outside of the 3-month time limit following the termination of his employment on 26 November 2008. The employee argued that his effective date of termination was 1 December 2008 but the Employment Judge at first instance found that the effective date of termination was 26 November 2008 and thus the claim was out of time. The Claimant appealed this decision.

In upholding the Claimant’s appeal, the EAT held that:

- Although the letter of 26 November 2008 released the Claimant from his obligation to work until 1 December 2008 there was no change to the date of termination and the Claimant was paid up until 1 December 2008;

- Were an employee is to be released from working before the end of the notice period it is possible to agree a variation so that the notice period comes to an end earlier. Where there is such an agreement the employee will only be entitled to be paid up until the agreed earlier date and that date will be the effective date of termination.

Where employers have stipulated or agreed a period of notice and later decide to release the departing employee from their obligation to work, it is important for employers to remember that, unless an agreement is reached to vary the notice period end date, the employee will be entitled to receive their salary and contractual benefits up until the end of their notice period, regardless of the fact they are no longer required to work, and the last date of employment will be regarded as the originally envisaged end date.

When it is proposed to alter the notice end date, a clear agreement should be recorded in writing setting out the new notice end date and the fact that the employee’s employment will terminate on that date.