



EMPLOYMENT LAW UPDATE

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3HR focus



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The first half of 2011 has not seen a great number of changes. However, the changes that have happened have been important. In addition, there are further changes that will come into force shortly, and other changes that may be brought in. Finally, I will mention two cases as reminders about procedure.

What has changed?

The most important change is the abolition of the **Default Retirement Age (DRA)**. Although this is only being formally abolished in October 2011, due to the need to serve considerable notice under the old rules, the DRA has effectively ceased for all employees who have not already received notice by April 2011. As a result of this, it is no longer possible just to say that all employees retire at a fixed age. It is possible to seek "Employer Justified Retirement Ages" where an employer may seek to show that its workforce, or a section of it, should retire at a certain age. However, it is for the employer to show that this is not age discriminatory. It is believed that very few employers are pursuing this option at present.

Any clause in an employment contract that just has a standard retirement age is automatically overridden so that this clause no longer applies. It is no longer possible to dismiss just because an employee has reached a certain age. Employers can monitor all employees in relation to maintaining standards, but this should not just be the older employees. It is permissible to hold meetings with employees to ask when they may wish to retire, although this should be approached carefully.



Additional Paternity Leave came into effect on 3rd April 2011. This gives certain fathers the right to take up to 26 weeks' Additional Paternity Leave. This has attracted a certain amount of adverse publicity from the business lobby. It remains to be seen, however, whether this will have much impact on employers. The amount of pay is not attractive to many families, and it will only be likely to apply where the mother is the higher wage earner.

Please turn over

What will change?

The Bribery Act 2010 is effective from 1st July 2011. This will require employers to review various procedures in relation to gifts and hospitality. This will be a major procedural change, and it is important that all national and multinational companies are ready for this change. If you have not already attended a course in relation to this topic, may I take the opportunity of mentioning that 3HR will be presenting a free Seminar in relation to this on 30th June.



The Agency Workers Regulations will come into force on 1st October 2011. This will mean that Recruitment Agencies and anyone who employs Temporary Workers will need to review their processes, as once many Temporary Workers have been employed for 12 weeks they will get certain rights to be treated in the same way as a permanent employee.

There are also plans to make additional changes to **Parental Leave** in 2012.



What may change?

The Government appears to want to be seen to be helping Employers. There has been talk of placing a maximum limit on Discrimination compensation, although it is difficult to see how this may be done under current European legislation. There have also been suggestions in relation to restricting the right of workers to take Industrial Action, particularly in respect of what formalities may be necessary before a Union may call a strike.

Brief Employment Tribunal Case Round-Up

I finish with two cases that show how important it is to follow fair procedures.

I think it is fair to say that, regardless of the merits of the particular case, many people wanted to see swift action in relation to the then-Head of Haringey Social Services, Sharon Shoesmith, at the time of the "Baby P" furore. Even so, the recently-reported case of R (Shoesmith) v Ofsted and Others shows just how important it is to follow due process. Ms Shoesmith was Summarily Dismissed without being given the opportunity to state her side of the case. As a result of this, it has been held that she was Unfairly Dismissed, without the need to look at the merits of the case. The message is clear-ALWAYS follow contractual disciplinary procedures. The settlement figure has not been made public but press speculation puts it in excess of £1m.

McKie v Swindon College shows the importance of being fair to ex-employees, even beyond a Reference. An employee at Mr McKie's former employer saw fit to pass some extremely damaging comments about Mr McKie to his new employer some time after he had joined them (and a long time after leaving the former employer). As a result of those comments, Mr McKie's current employer dismissed Mr McKie. He successfully sued his former employer in relation to those comments, even though they were not a reference. It is important to ensure that employees do not give references (or similar) that are inflammatory and capable of clear factual challenge. It is wise for all work references to be vetted, and other employees told that they cannot give work references without first submitting them for approval.



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