

Employment Law Update

March 2006

This month we look at the introduction of potentially radical changes in the law to outlaw age discrimination, new regulations in respect of pension rights and new compensatory limits for unfair dismissal. We also look at recent cases dealing with topics such as how Employment Tribunals are interpreting the new statutory grievance procedures and the issue of workplace stress.

Age discrimination in employment

The Government has recently finished the consultation process on proposals to legislate on age discrimination. It is proposed, subject to parliamentary approval, that new legislation in this area is to come into force on 1st October 2006.

The draft regulations at present:

- Introduce a new duty on employers to consider seriously an employee's request to continue working beyond retirement.
- Require employers who set their retirement age below the default age of 65 to justify or change it.
- Remove the current upper age limit of 65 for unfair dismissal and redundancy rights, giving older workers the same rights to claim unfair dismissal or receive a redundancy payment as young workers unless there is a genuine retirement.
- Prohibit unjustified age discrimination in employment and vocational training.
- Will effectively exempt most age related rules and practices in relation to occupational pensions.

The final version of the regulations will appear around Easter of this year and may be subject to change.

However, what things can you do to prepare for the introduction of this new legislation?

If you have not already done so, you should start a review of your employment practices and procedures now. In particular you should check the following:

- Your recruitment procedures e.g. job advertisements are not age discriminatory.
- Your application procedures e.g. how you conduct interviews and make decisions on job offers do not contain any prejudices in relation to age.
- Your employment rules and procedures e.g. employment contracts, staff handbook or other employment benefits.
- That you 'know' your staff. The legislation will not contain any obligation to collect information on the age profile of your workforce but it is recommended that you do so.

Annual increase in compensation limits – unfair dismissal

1st February 2006 saw a rise in compensation limits and applies to dismissals occurring on or after this date. The important increases are:

- Maximum compensatory award to rise from £56,800 to £58,400
- Maximum on a 'week's pay' to increase from £280 to £290

New Regulations: Pension Rights

The Occupational Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations 2006 will come into force on 6th April 2006.

The regulations provide for the situation where a member of an occupational scheme leaves a scheme with at least three months qualifying service, but with no right to a pension from the scheme. Previously, people are only entitled to a refund of contributions but now they will be entitled to receive either a cash sum to be transferred to another pension scheme, or to a refund of their contributions.

The DTI comments 'This will provide more of an incentive to build up pension rights than currently exists. If the member decides to take the cash transfer sum then they will benefit not only from their own contributions to the scheme but also those of the employer.'

Case Round up

Shergold v Fieldway Medical Centre

In this case, the claimant wrote a three page resignation letter setting out the reasons for her resignation and did not request for it to be treated as a grievance. Her employers did, however, invite her to a meeting to discuss the issues raised in the letter and before the claimant submitted her resignation. The issue arose as to whether the claimant's letter constituted a stage 1 grievance letter for the purposes of the statutory dismissal and disciplinary procedures.

An Employment Tribunal decided that the claimant's letter did not amount to a stage 1 grievance letter and was properly classified as

a resignation letter. However, the Employment Appeal Tribunal overturned this decision and held:

- The requirements are minimal – an employee needs to set out his or her complaint in writing. It is also not necessary that every detail of the complaint be set out, rather it is sufficient if the employer can understand the general nature of the complaint being made.
- The fact that the written grievance is contained in a letter of resignation ‘makes no difference at all’ provided that it is the setting out the complaint in writing.

Comment: This case is the latest of a stream of case law whereby there has been various interpretations given by Employment Tribunals on what constitutes a stage 1 grievance letter. There is likely to be some more case law on this point in the future as more claims are brought under the new statutory guidelines.

Workplace stress /Issue of Counselling

Hartman v South Essex Mental Health and Community Care NHS Trust

The Court of Appeal has recently provided guidance on what the implications of offering counselling are for both employers and employees. The judgment involved 6 cases which all involved psychiatric injury caused by work related stress. The Court of Appeal upheld the following important points:

- Information given by an employee in confidence during a counselling session remains confidential, even if the counsellor is employed by the organisation. This information is not to be passed to the employer.
- That employers do not make themselves more vulnerable by offering counselling but even if they do not necessarily discharge their duty of care. This is because, such counselling must be considered to be effective.

Comment: This case has clarified some of the issues that surround the provision of counselling services by employers which has been subject to judicial comment over the last couple of years. Whilst it is clear that the employer has no duty to offer counselling for work related stress, this case suggests that where an employee is reasonably offered counselling and refuses to take up this offer, this may prejudice any claim in which they take

in the future.

For further advice on any employment or human resources matter, please contact any member of the employment team:

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