



EmployNet

Changes to the Sex Discrimination Act

Harriet Harman, Women and Equality Minister, managed to pass new anti-sexual harassment rules in less than a month using a special statutory instrument to update the Sex Discrimination Act.

One of the most significant updates includes that the employer must now protect their employees from repeated acts of harassment by third parties, where the employee has complained of such harassment and the employer has failed to take reasonably practicable steps to prevent it. This includes members of the public and external third parties attending business meetings. Whilst this may not be problematic for some companies, for others such as public houses or food chains, the significance of this update cannot be underestimated.

For employers who encourage their employees to socialise and interact with members of the public it will be very hard to control and indeed employers will find it very hard to have any kind of management over the situation. Compensation for injury to feelings may occur when an employer knows that their employee is being repeatedly sexually harassed by a third party but fails to take reasonable steps to prevent it.

There has been criticism from some quarters as to the speed at which employers will have to adapt and respond to the updated Act, effective from 6 April 2008.

Phil McCabe, spokesperson for the Forum of Private Business, comments, "The best scenario would be delaying it in order to better inform and give support to smaller businesses, perhaps until October's common commencement date."

Other provisions have been introduced to extend the right of protection for pregnant women and those on maternity leave. Those women whose expected date of child birth is on or after 5 October 2008 can now expect full entitlement to benefits for 12 months rather than the existing 6 months. These benefits include entitlements such as company cars, health insurance, gym membership etc.

One other key element to note is that tribunals will now be able to award employees who successfully make a claim on the grounds of sexual harassment uncapped compensation limits.

Redundancy Pay - time to restore the value?

The Trades Union Congress (TUC) is putting pressure on the Chancellor, Alistair Darling, to increase the weekly limit on statutory redundancy pay from £330 to £500 per week. This, they argue, would be a big step in restoring the real value of the limit that was initially introduced at £40 a week in 1965.

The TUC argue that currently the maximum limit as to what counts as a week's pay is just 73% of the average weekly wage, when it was first introduced 40 years ago the limit was over twice the average pay.

TUC general secretary Brendan Barber stated: "Now is the right time to start to restore the value of redundancy pay."

We will continue to watch this and update you as necessary in future editions of EmployNet.

Meet the team

Andrew & Co. have a dedicated team of employment specialists available to help you. Please contact us if you need assistance.



Phillip Hoskins

Phillip is Managing Partner of Andrew & Co and Team Leader for the Employment and Dispute Resolution Team.

Phillip specialises in employment law, general commercial work and commercial disputes.

He deals with the drafting of employment documents and policies and also handles employment disputes right across the employment law spectrum including cases on TUPE and union cogtion.

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Annette P Wood

Annette is a Partner in the Employment and Dispute Resolution Team, she is also an accredited Commercial mediator.

Annette specialises in employment law, general and commercial disputes, particularly property and partnership / business disputes.

She drafts employment contracts and policies and advises generally on non-contentious employment matters, but also employment disputes. She regularly advises regarding compromise agreements.

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6 April - Employment Legislation Round-up

The start of the new tax year presents a busy time for new and amended Employment Law Acts. In total there were 25 new sets of employment related legislation that came into effect on 6 April 2008. Several of the changes are featured in detail in this edition, additionally highlighted here are some of the other key legislation changes.

Corporate Manslaughter

A new Corporate Manslaughter Act (Corporate Homicide in Scotland) has been introduced. This will allow organisations, rather than individuals, to be prosecuted for management failures leading to deaths. It is hoped that this Act will ensure that employers will now take health and safety issues more seriously.

Employee Consultation

The requirement for employees to be informed and consulted about their employer's business has now been applied to those businesses employing 50 or more employees.

Agency Workers

A controversial bill to give agency and temporary workers the same rights as permanently employed staff looks set to get the green light, in some form or another, in the near future. These rights include factors such as equal pay, pensions and training entitlements.

Since the amended draft EC Directive on "working conditions for temporary workers" was published in March 2002 the UK have repeatedly blocked the adoption of the Directive, the most recent occurring in December 2007.

However, it is expected that when France takes over the 6-monthly Presidency of the EU in July 2008 there will be a renewed push to adopt the Directive. Indeed the Department for Business Enterprise & Regulatory Reform (BERR) issued a consultation paper concerning this matter a year ago and Gordon Brown has recently suggested setting up a commission to make recommendations.

Unions are welcoming the news that the Bill aims to protect temporary workers and their rights. Communication Workers' Union general secretary Billy Hayes said: "This is a real 'minimum wage' moment. The working lives and welfare of 1.4 million agency workers and their families are one step closer to the fair and equal treatment they deserve and need."

However, as reported in issue 6 of EmployNet, the Confederation of British Industry (CBI) has gone on record as opposing this proposed new law stating that it will ultimately lead to thousands of job losses.

On a related topic, new legislation has been passed, effective from 6 April 2008, that should reduce red tape for agencies where a temporary worker is assigned for 5 working days or less. There will also be greater protection for workers whereby the agency can supply them with a formal statement of their right to cancel, or to withdraw from their work, without detriment or penalty.

On the case...

Age discrimination

In the case of *McCoy v James McGregor and Sons Ltd*, the tribunal held that the employer had used discriminatory words in its job advertisement, namely 'youthful enthusiasm'. 58 year old McCoy was rejected in favour of two more youthful candidates despite his obvious experience and competence for the role.

Exposure to noise extended

The rules that protect workers from exposure to excessive noise are to be extended to include the music and entertainment sectors.



Consultation on Pension Schemes

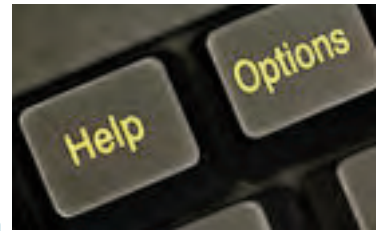
A duty for businesses to consult on employee pension changes is extended to include those businesses employing 50 or more employees.

On the web...

Health & Safety Executive

The Health and Safety Executive (HSE) has dedicated web pages which encourage good working practices on display screen equipment in the workplace.

Please visit - www.hse.gov.uk/msd/dse/index.htm



The HSE also has a revised version of their 'Workplace health, safety and welfare: a short guide for managers' available to download from their website.

Please visit - www.hse.gov.uk/pubns/indg244.pdf

Trades Union Congress

The Trades Union Congress (TUC) publication 'Hazards at Work' has been updated with new chapters including information on drugs, alcohol, fire safety and first aid.

Please visit - www.tuc.org.uk/h_and_s

Unlawful dismissal

A reminder for all that Employment Equality (Age) Regulations 2006 apply to young as well as the 'older generation'.

Leanne Wilkinson, 18, was employed as an office administrator with a three month probation period. During the probation period she was informed that her performance was not good enough and was dismissed the following month. Crucially no statutory dismissal procedures were followed by the employer.

Ms Wilkinson brought a claim against her employer on the grounds that she had been dismissed for being too young.

The tribunal agreed that Ms Wilkinson was dismissed because of her age rather than her capabilities. It also held that her employer had expected Ms Wilkinson to perform at a level that her predecessor had, who was much older than her, rather than assessing Ms Wilkinson's ability based on evidence of her performance.

Ms Wilkinson was awarded loss of earnings, loss of future earnings and £5000 for injury to feelings.

For businesses the lesson here is to ensure that you have clear and correct procedures in place for dismissing employees even when they are in a probationary period. Employers should also ensure that they have clear guidelines against which an employee's performance can be judged.