

EMPLOYMENT LAW UPDATE

TUPE'D OUT

The new Transfer of Undertaking (Protection of Employment) Regulations 2006 came into force on 6 April 2006.

There are changes to the old 1981 regulations as much of the existing case law has now been incorporated into statute.

They now provide that first and second generation contracting out services and the bringing in-house of previously contracted out services will be subject to the rules. In practice this could mean that any change of contractor providing services such as office cleaning, workplace catering, security duties, are all subject to the regulations. It may also include legal or financial support services.

Businesses will now need to take advice on the new regulations whenever they look at transferring a business or part of the business, including those labour only entities.

The regulations also tidy up situations when the purchaser, or new employer, can make changes to existing terms and conditions of employment. This should only be done where there is an economic organisational or technical reason such as a genuine redundancy situation.

There are new notification requirements, which the seller or existing employer must be aware of such as they must provide information about current employees and any tribunal claims not less than 14 days before the sale or transfer.

Failure to do so is likely to result in compensation payable to the buyer, or new employer at the rate of £500 per employee.

STATUTORY GRIEVANCE LETTERS

From 1 October 2004 employees have been required to send a formal grievance letter to their employer before they are allowed to bring certain types of tribunal claims. Since then tribunals have been refusing to accept claims such as sex discrimination and unpaid wages unless the employee has filed a grievance and then waited 28 days before they issue their claim.

Some case law has now emerged and it has been confirmed that the employee must set out their complaint in writing, but employers should be aware that they do not need to state that the letter is a statutory grievance letter or even that it amounts to a grievance.

Case law is however conflicting as in *Shergold v Fieldway Medical Centre* an employee's letter setting out her reasons for resignation did not amount to a formal grievance letter but in *Commotion Limited v Ruddy* an employee's written request to vary her working pattern could be a formal grievance letter, even if the letter dealt mainly with other issues.

All employers must have in place both disciplinary and grievance procedures in order to comply with the regulations. If you think that your policies may fall short of the new statutory requirements then we can take a look to ensure that they comply.

Remember that there is still uncertainty so it is best to treat any letter of complaint from an employee or ex employee as a formal grievance.

SLEEPY TRIBUNAL MEMBERS

The recent case of *Fordyce v Hammersmith & Fulham Conservative Association* resulted in an application to the employment appeal tribunal over the situation where a member of the tribunal panel, those attempting to give judgment on the claim, had fallen asleep, not once but twice during the hearing.

Perhaps not surprisingly the employment appeal tribunal ordered that the case be reheard ... but by a different tribunal!

AGE DISCRIMINATION

Are you ready for the new regulations?

Currently, once an employee reaches the age of 65 they are prevented from bringing a claim for unfair dismissal or claiming redundancy rights. When you consider that by the Year 2012 the number of people in the UK over 65 will exceed the number of people under 16, it would appear that on the whole, our ageing population should welcome the protection, which will follow laws already in existence to prevent discrimination on the grounds of sex, race, sexual orientation, religion or belief and disability.

However it is no surprise that the regulations will also bring the burden of notification and consultation requirements for the employer and an increased risk of claims for both direct and indirect age discrimination and unfair dismissal.

Sum up of the changes

Employers will be under a duty to consider requests from employees for them to work beyond the retirement age. At present it is thought that a new default retirement age of 65 will be implemented under the new regulations, but as these are in draft form only this is subject to change. A recent case has argued that the mere idea of having a default retirement age is discriminatory in itself!

Employers will need to notify employees in writing at least six months prior to the date that they are due to retire. This will help people to plan for their retirement and allow sufficient time for them to put in their request to work beyond that date.

Employers will need to ensure that they do not discriminate against employees with their recruitment policies, practices, service related benefits and insurance benefits. You may need to amend your existing discrimination and harassment policies to make it clear to employees that even a birthday card, which jokingly remarks on how old, or how young somebody is could result in a complaint for age discrimination.

However on the whole most of us should embrace the regulations as they provide equality of rights and increased working opportunities for all of us as we reach our later years. In comparison to other counties, the South West has a relatively high rate of older residents. In 2004, 38% of the population in the South West were over the age of 50. When you consider the falling birth rates and increased life expectancy this percentage is only set to increase.

INCREASE IN TRIBUNAL AWARDS

The upper limits on various tribunal awards took effect from 1 February 2006. The maximum limit on a week's pay for redundancy and unfair dismissal calculations has risen from £280 to £290. The compensatory award has increased from £56,800 to £58,400. This means that the total potential claim for unfair dismissal claims is £67,100! Discrimination cases still have no limit.

NOTE TO SEASONAL EMPLOYERS

For those of you about to take on seasonal, or younger employees to assist with the upcoming busy season, you need to be aware of laws requiring you to provide the National Minimum Wage, sufficient breaks, paid holiday and a written statement of terms and conditions. In addition be aware that in certain circumstances seasonal staff could still bring a claim for unfair dismissal and that all discrimination claims have no service qualification. If in doubt ensure that you treat seasonal employees in the same manner as temporary staff.

PETS AT THE OFFICE

As an attempt to persuade employees not to smoke during office hours a business in West Yorkshire has employed the assistance of a colleague called Rupert. The only difference being he is a Cocker Spaniel. The idea was that employees would substitute cigarette breaks for a ten-minute walk with their new friend. The managers have continued the new habit as a way of reducing stress levels and promoting good health.

SLEE BLACKWELL – seeing you through !

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