

Employment Law Update

for English UK



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Agenda

- Retirement
- Equality Act 2010
- Family Friendly Legislation
- Agency Workers
- Bribery Act
- Working Time Regulations
- National Minimum Wage Increases
- In the Pipeline...

Retirement

- Employment Equality (Repeal of Retirement Age) Regulations 2011
- Will not be able to use the Default Retirement Age (DRA) to compulsorily retire employees after 1 October 2011
- Objective justification
- Transitional arrangements
- Short notice provisions
- Working without the DRA...



Equality Act 2010 - A Refresher

- Equality Act 2010 - designed to consolidate and harmonise all existing anti-discrimination legislation
- Protected Characteristics
- Key Changes -
 - Associative & perceived discrimination
 - Definition of disability discrimination
 - Indirect discrimination
 - Harassment
 - Victimisation
 - Occupational Requirement
 - Gender reassignment
 - Pre-employment health questions
 - Pay secrecy clauses



Equality Act 2010 - Further Provisions

- Public Sector Equality Duty implemented 5 April 2011
- Positive Action in recruitment and promotion implemented 6 April 2011
- Under ‘consideration’ -
 - Combined / dual discrimination
 - Gender pay reporting



Family Friendly Legislation

■ Additional Paternity Leave Regulations 2010

- Applies to parents of babies due on or after 3 April 2011, and to adoptive parents who are notified of having been matched with a child on or after this date

■ Flexible Working

- Right to request flexible working due to be extended to parents of children under 18 from 6 April 2011 (currently up to age 17)
- Repealed 1 April 2011



Agency Workers

■ Agency Workers Regulations 2010

- Coming into force 1 October 2011
- Guidance now available on Department for Business, Innovation & Skills (BIS) website
- Key provisions
 - Agency workers will be entitled to equal treatment in relation to basic working and employment conditions
 - Rights to pay not just to basic hourly rate
 - Not extended to wider benefits
 - 12 weeks qualifying period
 - Anti-avoidance measures

Bribery Act 2010

■ Key provisions:

- Designed to consolidate existing legislation
- Will extend liability on organisations and their officers for acts of bribery committed in the UK and abroad
- Two general offences - giving bribes and receiving them
- Bribing a foreign public official will be an offence
- Special corporate offence of “*failing to prevent bribery*”
- Both an organisation and its directors can be liable for a corporate offence

- Originally due to be implemented October 2010
- Delayed until April 2011
- Due to be implemented 1 July 2011

- Guidance now available on Ministry of Justice website

Working Time Regulations

■ Key provisions -

- Working time must not exceed 48 hours per week (calculated over 17 week reference period), including overtime, unless an opt-out agreement has been signed
- Young workers (aged 15 - 18) must not work more than 8 hours in any one day or 40 hours per week
- Night workers must not work more than an average of 8 hours in each 24 hour period (calculated over 17 week reference period)
- Night workers are entitled to a free health assessment before taking up night work
- Young persons must not work between 10.00 pm and 6.00 am, except after assessment
- Employers must permit all workers to take a minimum of 5.6 weeks' paid holiday each year

■ What counts as working time?

- 'Active' vs. 'inactive' on-call time



Working Time Regulations

■ Rest breaks -

- Daily rest break of a minimum of 20 minutes if working 6 hours or more (young workers entitled to a minimum 30 minute break if working more than 4.5 hours)
- Daily rest period of at least 11 consecutive hours in each 24 hour period (12 hours for young workers)
- Weekly rest period of at least 24 hours in each 7 day period (young workers are entitled to a rest period of 48 hours)

■ Enforcement -

- Limits on working time enforced by health & safety authorities - enforcement notice, criminal offence, fine, imprisonment
- Workers' entitlements enforced by complaint to an employment tribunal - compensatory awards



National Minimum Wage Increases

- New rates from 1 October 2011 -
 - Adult rate (workers aged 21 & over) - £6.08 (increase of 15p from £5.93)
 - Workers aged 18 - 20 - £4.98 (increase of 6p from £4.92)
 - Workers aged 16 -17 - £3.68 (increase of 4p from £3.64)
 - Apprentices - £2.60 (increase of 10p from £2.50)

In the Pipeline...

■ Protection of Freedoms Bill

- Likely to become law by the end of 2011 / early 2012
- Designed to provide a better balance than the Safeguarding Vulnerable Groups Act 2006
- Key provisions
 - Will continue to be an offence for a barred person to work with vulnerable groups in regulated activity roles
 - Will still be an offence for an employer or voluntary organisation to knowingly employ a barred person in a regulated activity role
 - Requirement for registration to be scrapped
 - No ongoing monitoring
 - Criminal Records Bureau & Independent Safeguarding Authority to be merged

In the Pipeline...

- “Consultation on Modern Workplaces” launched 16 May by Department for Business, Innovation & Skills (BIS)
- Consultation closes 8 August
- Proposes changes in the following areas -
 - Flexible Parental Leave
 - Flexible Working
 - Working Time Regulations
 - Equal Pay

In the Pipeline...

- Consultation to “*improve the way in which workplace disputes are resolved*”
- Issued on 27 January by the Department for Business, Innovation & Skills (BIS) (closed 20 April)
- Key proposals include
 - Increase qualifying period of length of service for claiming unfair dismissal to two years
 - Ways to prevent employees from bringing unmeritorious claims
 - Employees to submit claims to ACAS before being allowed to go to an employment tribunal

In the Pipeline...

- “Employer’s Charter” issued by Department for Business, Innovation & Skills (BIS)
 - Simple list of “employer rights”
 - States that *“As an employer - as long as you act fairly and reasonably - you are entitled to...”*
 - Ask an employer to take their annual leave at a time that suits your business
 - Contact a woman on maternity leave and ask when she plans to return
 - Make an employee redundant if your business takes a downward turn
 - Ask an employee to take a pay cut
 - Withhold pay from an employee when they are on strike
 - Ask an employee whether they would be willing to opt-out from the 48 hour limit in the Working Time Regulations
 - Reject an employee’s request to work flexibly if you have a legitimate business reason
 - Talk to your employees about their performance and how they can improve
 - Dismiss an employee for poor performance
 - Ask an employee about their future career plans, including retirement

