

Employment Law Update

A Year in Employment Law

With the end of the year approaching, Bevan Kidwell highlights the key employment law changes of 2011 and predicts what is to come in 2012.



April 2011

Equality Act 2010 – positive action provisions

There is now a new optional right for an employer to take positive action in recruitment and promotion. The new right permits an employer faced with two candidates who are equally qualified, to prefer the candidate with a protected characteristic, where the employer reasonably thinks that that candidate is disadvantaged or disproportionately badly represented. A protected characteristic is a characteristic which could give rise to a claim of unlawful discrimination, namely: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. The employer must not, however, have a policy of treating people in the protected group more favourably, and the positive action must be a proportionate means of enabling or encouraging a protected group to overcome disadvantage.

Flexible working

The right to request flexible working now extends to parents with children under the age of 18.

June 2011

The Transnational Information and Consultation of Employees (Amendment) Regulations 2010

The Regulations aim to increase the use of European Works Councils. The changes include new definitions of information and consultation, and require arrangements for informing and consulting employees to be defined and implemented.

July 2011

The Bribery Act 2010

The Bribery Act 2010 came into force on 1st July 2011 and creates several new offences for which employees, directors and commercial organisations can be liable if they offer or accept bribes. The new offences carry a maximum penalty of ten years' imprisonment or an unlimited fine.

October 2011

The Agency Workers Regulations 2010

The Regulations give temporary agency workers equal treatment in comparison to permanent workers as regards basic working conditions such as pay, working hours and holidays once the worker has completed a 12-week qualifying period in any given job.

The Default Retirement Age

The Default Retirement Age has been abolished as of 1st October 2011. Employers are now only able to retire employees if they can satisfy the standard test of objective justification for direct age discrimination. Employers need to demonstrate a legitimate aim and a proportionate method of pursuing this aim.

National Minimum Wage

The NMW rates have increased as follows:

- The standard (adult) rate (workers aged 21 and over) increased to £6.08 per hour (from £5.93).
- The development rate (workers aged between 18 and 20) increased to £4.98 per hour (from £4.92).
- The young workers rate (workers aged under 18 but above the compulsory school age who are not apprentices) increased to £3.68 per hour (from £3.64).
- The rate for certain apprentices (those under 19 years of age or those aged 19 and over but in the first year of their apprenticeship) increased to £2.60 per hour (from £2.50). All other apprentices will continue to receive the national minimum wage at the appropriate age rate.
- The accommodation offset rose to £4.73 per day from £4.61.

What the future may bring - 2012 forecast

April 2012

Unfair Dismissal

Following recent Government proposals, the qualifying period for claiming unfair dismissal claim will be extended from one year to two years.

Apprenticeships, Skills, Children and Learning Act 2009

The Apprenticeship Unit (part of the Department for Business, Innovation and Skills (BIS) and the Department for Education) has announced that the prescribed form of apprenticeship agreement anticipated by the Apprenticeships, Skills, Children and Learning Act 2009 is anticipated to come into force in April 2012.

The Act introduces a new apprenticeship structure and promotes the creation of apprenticeship agreements and the provision of apprenticeship certificates. Under the Act there will be a prescribed form of apprenticeship agreements.

July – August 2012

The 2012 Olympics

2012 will bring the London Olympics and all the excitement and potential issues that come with it. In order to keep the balance between avoiding over-demand for time off or inappropriate sickness absenteeism during the Olympics and keeping staff morale high, we encourage employers to implement Olympic-friendly policies. Such policies will help employers manage the demand to watch the Olympics but also ensure that business runs smoothly. Of course, Bevan Kidwell would be happy to help you to come up with ideas and solutions, as well as preparation and implementation of the policy.

October 2012

The Pensions Act 2008

The Act imposes an obligation on employers to enrol workers into either their own occupational pension scheme or the statutory National Employment Saving Trust. This auto-enrolment will first apply only to large organisations but will extend to smaller employers over the following four years.

Recent Government Consultation

The Government has announced a consultation on changes to employment law. The key points of the consultation include:

- whether small firms should be able to dismiss staff without their agreement and without the firms being taken to a tribunal if they pay compensation;

- a consultation on "protected conversations", which would allow employers to have frank discussions about poor performance with workers without fear that they could be used as evidence in a tribunal. Such a conversation could concern performance or retirement;
- whether the length of time required for a consultation period on planned redundancies should be reduced from 90 to 30 days;
- a requirement for all claims to go to the conciliation service ACAS before reaching employment tribunal; and
- options for a "rapid resolution scheme" for more simple cases to be settled within three months.

More information on the recent proposals can be found at <http://www.bis.gov.uk/news/speeches/vince-cable-reforming-employment-relations>

<http://www.bis.gov.uk/news/topstories/2011/Nov/reforms-to-job-laws-to-help-business>

<http://nds.coi.gov.uk/content/detail.aspx?NewsArealD=2&ReleaseID=422195&SubjectId=2>

We hope that you found this update useful. If you require legal advice in relation to employment law issues, please contact Irina Bernstein of Bevan Kidwell on 020 7843 18 20 or send your email to irina@bevankidwell.com