



Whitehead Vizard

Solicitors

EMPLOYMENT NEWSLETTER

APRIL 2011

Welcome to Whitehead Vizard's Spring Employment Newsletter. Many businesses may know through the press and media that April 2011 will be bringing further changes in certain areas of employment law. This edition also briefly highlights certain proposed changes that the present government is intending.



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Tribunal Claims

The government is undertaking a consultation on reforming Employment Tribunals and such consultation is due to close on 20 April. The most prevalent areas the government is seeking to reform concerns the increase of the qualification period for unfair dismissal from one year to two years and also the introduction of tribunal fees for claimants. Under the current regime, any individual can bring a claim against their employer by filing the necessary forms at their regional tribunal without the need to pay a fee. The government is hoping to deter employees with spurious and unmeritorious claims from wasting the time and costs of the employer and the tribunal itself by ensuring that proper consideration is given before mounting a claim.

LEGISLATIVE CHANGES IN BRIEF

Additional Paternity Leave and Pay

Those new fathers who are employed for six months or more already enjoy the right to take two weeks paternity leave coupled with statutory paternity pay. New and additional rights are due to come into force for employees whose child or in the case of an adoptive parent, one who has been notified of a match, on or after 3 April 2011. If both parents are working, the father can take up to six months additional paternity leave once the mother returns to work. However, employers should note that this right can only be requested if the mother returns to work without having exercised her full entitlement to maternity leave.

Default Retirement Age

With effect from 6 April 2011 the default retirement age of 65 is abolished. The government's motives in this regard are clear; it is formulated in order to encourage people to work longer and therefore, save for their own retirement. The abolition of the DRA does not mean that an employer will not be able to retire an employee who is 65 or over. The change means that it will become more difficult to compulsorily retire an employee as the employer will have to show objective justifications for the decision and will need to ensure that the reasons are not discriminatory in any way. The date of 5 April 2011 is the cut-off point and therefore, employers wishing to retire those employees who are 65 or over before this date should act now, being careful to use the current retirement procedures.

Statutory Payment Rates

There are new increases in statutory payment rates from 11 April 2011 for maternity, paternity and adoption pay. The rates will increase to £128.73 per week. The earnings threshold per week for such payments will also increase to £102.

Statutory Sick Pay

The standard rate in this category will also increase from 11 April 2011 to £81.60, with the weekly threshold rising to £102.

Maternity Allowance

This rate also increases to £128.73 although the earnings threshold remains unaltered at £30.

Right to Train

Some employers will be already be aware that in April 2010 employees working in organisations employing 250+ staff were given the statutory right to take time off from the workplace to train. There is no obligation on the employer to offer payment during such period. It was announced initially by the government in the summer of last year that such right would be extended to all employees from 6 April 2011. However, given that many business organisations have been highly critical of the plan to extend this right to all employees, regardless of the number of staff employed in an organisation, the government has put the matter on a back burner. The government has announced that for the present time the right will not be extended and could be delayed in order to "subject it to further scrutiny". This means that any organisation employing less than 250 members of staff will not need to worry about allowing such time off for training. This will be on the basis that the employee has no statutory right to such in an organisation employing less than 250 employees.

Pay as You Earn

On 6 April 2011, the income tax (Pay as you Earn) Amendment Regulations 2011 come into force. The payroll department in your business may wish to know that

under the current law when a payment is made to an employee who has left your employment and their P45 has been produced, income tax is deducted at a basic rate only and the employee remains responsible for paying any additional tax using the BR tax code. This is set to change after 6 April 2011 as your payroll department must deduct tax at the full rate of 20%, 40% or 50% as appropriate, from any post termination payments using the OT tax code. Your Inland Revenue office will be able to advise further.

Fit to Work Notes

Many of you will know that in April 2010 the new Fit to Work Note replaced the traditional sick note. The big difference in the two is that under the fit to work note system the GP is enabled to indicate whether an employee may be fit to work, but with conditions, such as an employer having to make certain adjustments to the employee's role or working conditions, in order to accommodate them back to work. Many employers are reporting that whilst there are positive aspects to the new fit to work note, the main difficulty being encountered is that in instances where the GP has made suggestions to rehabilitate an employee back to work, such suggestions or advice was impractical for the employer. In some instances employers have reported that they do not feel sufficiently confident that the GP has fully understood the employee's role. The insurer, Aviva, produced an annual health of the workplace report and 50% of GPs questioned in that report stated that they do not have sufficient time to go into details over a detailed diagnosis or over lifestyle and work related advice.

The important point that employers should note is that recommendations made in a fit to work note by the GP is in no way binding on the employer. It is merely a tool in order to facilitate discussions between the employer and employee. It is not advisable to completely disregard the fit to work note, but rather to approach it in a consultative manner.

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