BBi Alternative Solutions
Health & Safety : Human Resources : Training : Risk Management

Human Resources - May 2011

DEFAULT RETIREMENT AGE

Employers have not been able to issue any notices and dismiss staff by reason of retirement after 5 April 2011. Any compulsory retirement age must be removed from existing terms and conditions.

The last date for retirement of an employee under the provisions will, in most cases, be 4 April 2012. However, an employer may agree a period of working beyond retirement of up to six months without having to issue a fresh notice of its intention to retire.

This means the last possible date for retirement of an employee is six months after 4 April 2012. It has yet to be classified whether the last possible date is the 3rd, 4th or 5th October 2012.

The only way to dismiss now by way of the default retirement provision is, if it can be objectively justified. **So what to do in the absence of the default retirement age?**

Capability dismissals – The key here is to be consistent with all staff. If an employee is not performing, they should be dealt with through the performance management procedure. Capability must relate to the work that employee is employed to do and age should not be taken into consideration.

HUMAN RESOURCES - SUPPORTING YOUR BUSINESS

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EQUALITY ACT 2010

The Equality Act consolidates existing legislation and brings all the protected characteristics together. These include, Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex and Sexual Orientation.

The important changes include the following;

Disability: The definition of disability has changed and there is no longer the necessity to reference specific capacities such as, mobility, speech, hearing or eyesight. It is simply described as a physical or mental impairment, which has a substantial, long term adverse effect on a person's ability to carry out normal day-to-day activities.

Interviewing: An employer is no longer able to ask specific questions about an employee's health prior to offering them employment (subject to some exceptions).

Victimisation: A person victimises another person if they subject them to a 'detriment' because they have, or may do, a protected act e.g. submitting a grievance, bringing a claim, associated with someone who has brought a claim etc.

Perceived Discrimination: A person is discriminated on this basis, if he is perceived to be e.g. homosexual, too old etc

Associative Discrimination: A person is discriminated on this basis, if they are associated with another e.g. a mother looking after a disabled child.

Positive Discrimination: can now be used by employers to promote diversity in the workplace. Employers will be allowed to give preference to candidates from under-represented or disadvantaged groups in recruitment and promotion where there is equal merit. This is purely optional for employers. Combined discrimination is due to come into force but not here yet, this will allow claims on a combination of protected characteristics.

Liability for Third Parties: An employer is now also liable for the behaviour of non-employees in the workplace where:

- The behaviour amounts to harassment;
- The employer knew about the harassment on at least 2 occasions and
- The employer didn't take reasonable steps to prevent the 3rd occurrence.

ORDINARY PATERNITY LEAVE AND ADDITIONAL PATERNITY LEAVE

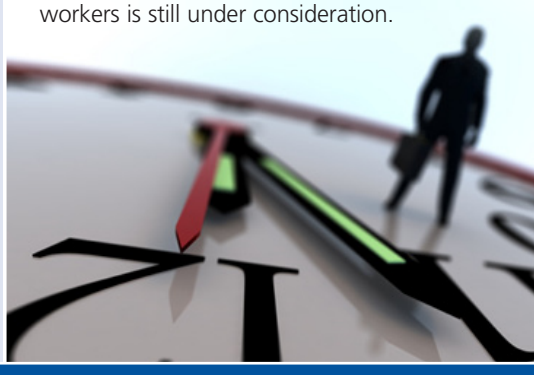
For children born on or after 3 April 2011 (or in case of adoption, date of notification of being matched for adoption), eligible employees are now entitled to 2 weeks of Ordinary Paternity Leave and up to 26 weeks of Additional Paternity Leave (APL).

The new provision will be available during the second six months of the child's life, giving parents more choice in child care responsibilities and the option of dividing a period of paid leave entitlement between them.

FLEXIBLE WORKING

The Flexible Working Regulations 2010 that were to come into force on 6 April 2011 have been repealed.

This included the right to request flexible working to be extended to parents of children under the age of 18. Extension of the right to request flexible working to all workers is still under consideration.



BRIBERY ACT

The much awaited guidance was published on 31 March 2011 and as promised, employers have been given 3 months time before the Bribery Act 2010 will come in to force on 1 July 2011. Companies will be liable if they fail to show that they have 'adequate procedures' to combat bribery. Adequate procedures will depend on the nature and size of the business.

Corporate hospitality and promotional expenditure will not be prohibited as long as it is 'reasonable and proportionate' to the business. Facilitation payments will continue to be prohibited.

From 1st July, it will become a criminal offence for commercial organisations to fail to prevent Bribery. This will happen if one of your employees or contractors bribes another person, intending to obtain or retain business or to obtain or retain an advantage in the conduct of your business or where one of your employees accepts a bribe for the above reason. It is important to know that, should your business have adequate procedures in place, designed to prevent people associated with it from engaging in such conduct, then you will have a defense and may not be guilty of any criminal offence.

AGENCY WORKERS REGULATIONS 2010

The Agency Workers Regulations are to come into force on 1 October 2011. Guidance to help employers was published on 6th May 2011.

The Regulations will give agency workers the same basic employment rights after an initial 12-week period as permanent employees. The 12 week period begins on 1st October 2011 so, no agency workers will be able to claim these new rights before Christmas 2011.

http://www.bis.gov.uk/assets/biscore/employment-matters/docs/a/11-905-agency-workers-regulations-guidance.

IMMIGRATION

With effect from 6 April 2011, the pay threshold of £40,000 for individuals staying over 12 months and up to five years in the UK has been introduced for intra-company transfers. For individuals staying less than 12 months, the pay threshold will be £24,000. This will not apply for those already in the UK.

Further, there is now an annual limit of 20,700 non-EU skilled professionals under Tier 2 of the points based system entering the UK. There are also changes to certificates of sponsorship, details of which can be obtained from UKBA Website.

For more information, please visit http://www.ukba.homeoffice.gov.uk/

CONSULTATION ON PROPOSALS TO IMPROVE RESOLUTION OF WORKPLACE DISPUTES

The closing date for the consultation on proposals for improving workplace disputes was 20 April 2011. Following are some of the key points under consideration:

- Greater use of ACAS to reduce the number of claims
- Greater power to Tribunals
  - Proactively seeking more information from Claimant
  - Charging claimants a fee for bringing in a claim
- Qualifying period for an unfair dismissal claim to be increased to two years
- Financial penalty to unsuccessful employers
- Reducing timescales for tribunal hearings

This all sounds very positive. Less popular however, is the proposal that any employer who loses a claim shall have to pay a fine on top of the compensation for the employee. This could amount to 50% of the award up to a maximum of £5000, this will go directly to fund the employment Tribunal System.

Over the last couple of years the number of cases reaching Tribunal has hugely increased, it is thought to be by more than 50%. Many of you may have experienced this for yourselves, the increases being driven by disputes about equal pay, unfair dismissal, age, sex, race and disability discrimination.

With this being high on the agenda, we are able to offer our clients with not only hands on consultancy but also, an insured/legal expenses cover of up to £75,000 per claim.

For further information please contact Michelle Brinklow at BBi Alternative Solutions:

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CASE LAW UPDATE

In **First Scottish Searching Services v McDine**, the EAT held that just because there was a perceived risk of unfairness in the selection criteria used for redundancy, it does not automatically imply an unfair dismissal claim. As long as the process is carried out in a reasonable and objective manner, the dismissal will be fair.

In **Ashby & others v Birmingham City Council**, the HC ruled that provided there is a good reason for an equal pay claim to be brought in after the six months' limit, such a case can still be brought to a county court. This ruling allows for claims to be made up to six years after termination of employment.

The case of **Watkins v Journeys Toward Recovery** highlights that employers must be aware that any discretionary benefits must not be made contractual either by incorporating or implying such a benefit. Non-contractual terms can still be incorporated into an employment contract especially where they are clearly set out in the staff handbook.

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