



Alternative Solutions

Health & Safety : Human Resources : Training : Risk Management



Human Resources - October 2007



GRIEVANCE CLAIMS INCREASE BY 15%

The number of cases brought to employment tribunals in 2006/07 has risen by 15% from 115,039 to 132,577 according to figures published by the Tribunals Service.

The significant reason for the increase in employment tribunal cases in 2006-07 is a 155% increase in equal pay claims.

In between 2006-07 the Tribunals Service piloted an early dispute resolution scheme in several employment tribunals and worked closely with the new Department of Business, Enterprise & Regulatory Reform on plans to revise employment dispute resolution procedures.

It has been reported that the rise in claims lodged emphasises the failure in the Government rules put in place to resolve disputes away from the courts; earlier this year the Government discarded the regulations that were introduced back in 2004 which had been designed to reduce litigation.

STATUTORY DISPUTE RESOLUTION

As the Government reveals its Employment Simplification Bill this could mark the end of the statutory dispute resolution procedures.

In early 2007, the Government announced a consultation process in response to the findings of the Gibbons Review. This had widely condemned the current statutory dispute resolution procedures.

The consultation process closed in June 2007 and, within a month, the Government announced it proposed to introduce an Employment Simplification Bill which would be put in place to overhaul the statutory dispute resolution procedures less than three years after they were brought into force.

EXISTING OBLIGATIONS TO CARRY OUT STATUTORY DISPUTE RESOLUTION PROCEDURES

The statutory procedures were introduced in October 2004 and set out compulsory minimum methods of dealing with discipline and grievance matters.

Within the standard disciplinary and dismissal procedure, employers must set out the nature of their allegation or allegations against the employee in writing, hold a meeting with them to discuss the matter and give them a right to appeal the decision made.

The standard grievance procedure requires the employee to set out the nature of their grievance in writing, attend a meeting with their employer to discuss it and gives a right to appeal the decision made.

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HUMAN RESOURCES OCTOBER 2007

HUMAN RESOURCES - SUPPORTING YOUR BUSINESS

Grievance claims increase by 15%

Annual leave increase

Minimum wage

PILON clauses

Statutory paternity leave

Disability assessments

Equal pay - defining 'same job'

Compensation ruling

Workplace discrimination

Paying salary to disabled employees

Race bias persists

Fines overhaul

Be nice to employees who are suing you!

Age discrimination

Bank holiday entitlement



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PROBLEMS WITH THE STATUTORY PROCEDURES

Initially, the statutory procedures looked simple enough and they certainly had a simple aim - to improve the way that disputes were handled in the workplace and, in turn, reduce the number of employment tribunal claims. Unfortunately, this has not happened. A survey by the Employment Lawyers' Association found that most employers and employees consider that the new procedures are actually costing them more in terms of time and money, than previously. It was found that in 2005/2006, the number of claims being brought to the employment tribunals had actually risen by one third. And if this statistic wasn't bad enough, the tribunals actually appeared to be more than willing to interpret compliance with the procedures liberally, meaning that employers and employees can never be truly certain that they have met their obligations.

HOW WILL THE EMPLOYMENT SIMPLIFICATION BILL ADDRESS THIS?

In its draft legislative programme the Government revealed that the main purpose of the Employment Simplification Bill is to "simplify, clarify and build a stronger enforcement regime for key aspects of employment law". It will achieve this by the introduction of legislation to implement the Gibbons Review of workplace dispute resolution. Included in this is the dramatic step to repeal the statutory dispute resolution procedure. It will also implement a package of replacement measures encouraging early and informal resolution of workplace disputes and make changes to the tribunal system. The Government believes that all of these measures will benefit businesses by as much as £180 million per year.

IMPLICATIONS FOR BUSINESSES

The government has not yet provided information on what the Employment Simplification Bill will contain or published its reaction to the consultation paper. These are expected this autumn, with further details of the Bill being given at the time of the Queen's Speech at the State Opening of Parliament on 6 November 2007. However, in light of the recommendations of the Gibbons Review it is probable that businesses can expect the following changes:

- Removal of the statutory requirement to follow minimum disciplinary and grievance procedures. Instead, employers can expect clear, non-prescriptive guidelines and recommended actions for best practice. ACAS has suggested that this could be achieved by a strengthened ACAS code of practice. However, other organisations have suggested that the ACAS code is too lengthy and complicated, so, instead, there should be a simplified guidance in the form of bullet points.

- Bolstering of the advice services for employers and employees. The Government has recommended the introduction of a new advice service with an improved telephone and internet helpline. It has also suggested redesigning the tribunal application process so that potential claimants gain access through the helpline, and gain advice on alternatives to making a claim when doing so. Although, these measures have been criticised from employer and employee bodies alike, who have questioned the impartiality of such a service and suggested that improving existing services would be more productive.

The simplification of tribunal forms

- Much more efficient and consistent management of weak and vexatious claims. Should the Government decide to implement cost sanctions as a penalty for failing to take adequate steps to resolve disputes, employers will need to act with caution. The CBI, however, has criticised this approach and suggested that more effective case management should be used.

Only time will tell to see exactly what the Government has in mind. The answers should be revealed when it publishes its response to the consultation process.



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ANNUAL LEAVE INCREASE

The Government has now increased the minimum annual leave resulting in employees having the right of 8 days bank holidays on top of the current 20 days leave. This means that the minimum annual holiday entitlement will now increase from 20 days to 28 per year. However, as employers are still able to specify when employees take these additional holidays there is still no legal right to be paid if taking a day off on a bank holiday. This will take effect from October 2007 with 4 days additional paid leave, and the remaining 4 days from April 2009.



MINIMUM WAGE

On the 1st October 2007 the National Minimum wage for anyone aged 22 and over was increased from £5.35 to £5.52. In addition there were increases for those aged 18-21 from £4.45 to £4.60 and those aged 16-17 years from £3.30 to £3.40.

Discussions are still taking place with regard to the National Minimum Wage Act 1998 for voluntary workers. Voluntary workers can be defined as those who receive no pay or benefits in kind except for expenses, subsistence or accommodation or training costs.

PILON CLAUSES

The Court of Session has ruled that PILON clauses cannot be referred to within contracts of employment. This means that should you as an employer want to pay money in lieu of notice and not be in breach of contract there will have to be reference to this within the contracts of employment.

STATUTORY PATERNITY LEAVE



Discussions are ongoing with regard to statutory paternity leave. The DTI are proposing that should a mother wish to return to her job after 6 months maternity leave the unused part of her maternity leave can be passed on to the child's father.

DISABILITY ASSESSMENTS

The Court of Appeal is considering whether an employers failure to make an assessment of a disabled employee should be classed as a failure to make a 'reasonable adjustment'.

EQUAL PAY - DEFINING 'SAME JOB'

The Employment Appeal Tribunal has decided that three issues should be considered when comparing 'old' and 'new' jobs once a woman returns from maternity leave: nature, capacity and place. This is relevant when addressing the woman's entitlement to return to the same job she was employed to do before her absence.

COMPENSATION RULING

The Employment Appeal tribunal has ruled that tribunals cannot award compensation for employees working illegally, e.g. when an employee continues to work after their work permit has run out.



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WORKPLACE DISCRIMINATION

According to findings by the international labour organisation, discrimination in the workplace is still a worldwide issue. There continue to be gaps in pay between males and females plus the onset of discrimination due to age, sexual orientation and HIV/Aids.



BE NICE TO EMPLOYEES WHO ARE SUING YOU!

When dealing with employees who believe they have been treated unfairly or unreasonably, regardless of the stage the complaint is at, employers should treat employees sensitively and respectfully at all times, by all forms of communication. For example, a forceful and/or intimidating letter sent by an employer can be classed as victimisation.

PAYING SALARY TO DISABLED EMPLOYEES

An employer is not obliged to pay disabled employees as part of their duty to make reasonable adjustments. The Employment Appeal Tribunal states that the courts should not interpret the Disability Discrimination Act 1995 in a way which encourages employees to stay away from work. It also states that it is unreasonable to expect an employer to subsidise, indefinitely, long-term sick staff who qualify as disabled.

RACE BIAS PERSISTS

Most problems experienced by ethnic minority groups seem to stem from employment. The commission for racial equality recently carried out some research which found that 43% of complaints received related to employment issues in particular: bullying in the workplace, lack of promotion/career opportunities and insufficient interview openings.

AGE DISCRIMINATION

Age discrimination applies at all stages of an employees working life: recruitment; development and promotion etc. A recent case in The Republic of Ireland found that an applicant giving incorrect personal information at interview stage to questions such as 'date of birth', 'age' and 'number of children' had been discriminated against on the grounds of age as the questions were 'irrelevant and invasive'. Age would not have deterred the applicant from carrying out their duties.

FINES OVERHAUL

The DTI has proposed new fines for employers who pay below the minimum wage. The new proposal also suggests that interest or other cash be paid to employees, by employers, who have been underpaid in addition to paying the arrears.

BANK HOLIDAY ENTITLEMENT

A part-time employee working, for example, Wednesday to Friday, does not have to be awarded time off in lieu of Monday bank holidays. Similarly, a full time employee working Tuesday to Saturday may be treated in the same way.

Time off in lieu for bank holidays is dependent on what is agreed and stated within the employee's contract of employment.



BBi understand how Human Resources strategies can help an organisation safeguard its future. Our consultants are based in London and the North East and we would welcome an opportunity to discuss how we can help you start taking positive steps towards protecting your organisation's value, owners, employees, customers and stakeholders.

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