

Welcome to the February issue of our newsletter. Below, you will see just some of the hot topics that could be having an impact on your business - now or in the near future.

If you wish to discuss any of the matters referred to in this newsletter, please contact us on: 020 3159 5160, or at enquiries@goldenleaver.co.uk

The Equality Bill

Of all the legislation to be published this year, the Equality Bill is considered the most significant. The main purpose of the bill is to consolidate the different aspects of discrimination law which has developed in a piecemeal fashion over the last 40 years and is spread over seven different pieces of legislation (equal pay, sex, race, disability, religion & belief, sexual orientation and age).

As well as harmonising the law the Bill also introduces new provisions including amongst other changes, extending age discrimination to the provision of goods, services and facilities and widening the definition of direct

discrimination and harassment to cover claims based on "association" and "perception".

The race is on for the Government to get the Bill passed before the election in May this year (6th May to be precise for anyone who hasn't heard the 'open secret') especially as the Conservatives have already been vocal in their opposition and will look to veto it if they gain power before the Bill becomes law.

However even if the Bill does become law in April it is not expected to actually come into force until Autumn 2010.

Fit note

The Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) Amendment Regulations 2010 will come into force in April 2010 under which the sick note will be replaced with a 'fit note'. Under the new system this note will allow doctors to state whether an employee is either 'not fit for work' or 'you may be fit for work taking into account the following advice'. It will then be up to the employer to consult with the employee as to whether the business can accommodate any changes to facilitate a return to work.

Interestingly, an earlier draft of the Regulations included a third option which was a 'fit to work' option which has since been removed on consultation as there were concerns that doctors would not have the appropriate knowledge about an individual's role to be able to properly assess them. There are still concerns as to how the 'fit note' will work in practice since there is very little time for doctors, employers and employees to familiarise themselves with this new system before April 2010.

Paternity leave

Additional paternity leave is to come into force in April 2010 and be effective for parents of children due on or after 3rd April 2011. The new paternity leave provisions will allow fathers to benefit from an additional 26 weeks' paternity leave if the mother returns to work for the second half of her maternity leave. Mothers will therefore be able to transfer their leave to the father. Up to three months of the transferred maternity leave will be paid at the usual rate of statutory maternity leave, currently £123.06.

Employers should ensure that their parental leave policies are updated by the end of 2010 to provide for these changes.

It is anticipated that the take up for this additional paternity leave will be minimal with the Government estimating that only 4% to 5% of eligible fathers will apply. Given that only 55% of fathers currently choose to take up paternity leave (citing financial concerns for not taking it) this may not be such a surprise.

Time off for training

A right to request time off for training will be introduced in April 2010 under the Apprenticeships, Skills, Children and Learning Act 2009 and will be modelled on the right to request flexible working. For businesses with more than 250 employees there will be a right to request time off for training for all employees with more than six months' continuous employment from 6th April 2010. The intention is that this will be

rolled out for all businesses regardless of size from 6th April 2011.

As with flexible working, although employers will be obliged to consider a training request, they may refuse any request where there is a good business reason for doing so. Employers will not be required to meet the salary or training costs of such training.

Bankers' bonuses

Last week the Financial Services Bill had its first reading in the House of Lords and the second reading is scheduled for 8th February 2010. As there are a few stages to go before it is given Royal Assent, it is unlikely to become law before the general election.

However, if the Bill does go ahead it will regulate the disclosure of remuneration. In particular, the regulations are intended to give the Financial Services Authority (FSA) power to require that regulated companies have remuneration policies that are consistent with effective risk-management and international standards, including

those adopted by the G20. The Bill will also give the FSA the power to prohibit terms in employment contracts that encourage excessive risk-taking or include multi-year guarantees and to implement arrangements for any such payments to be clawed back.

The size of recent bonus awards suggests that financial institutions are immune to adverse publicity surrounding large payouts. The number of banks affected by these new rules is limited and it is therefore anticipated that the market will dictate that 'talent' remains extremely well rewarded.

Agency workers

The Government has recently published the long-awaited Agency Workers Regulations 2010. The Regulations will implement the Temporary Agency Workers Directive under which temporary agency workers who have completed the 12 week qualifying period will be entitled to the same basic working and employment conditions as would apply to a permanent employee fulfilling the same

role. The Regulations were due to be implemented in 2010 but have been postponed until October 2011.

Further details regarding these Regulations and the potential effect that they will have on business will be the subject of an In Focus newsletter later in the year.

Blowing the whistle

The Government has confirmed that following its consultation on Employment Tribunal Claims and the Public Disclosure Act, the subject matter of whistle blowing claims brought on or after 6th April 2010 may be passed on to the relevant body or regulator by an Employment Tribunal.

The new regime, which will be implemented via the Tribunal Rules of Procedure 2004, includes an amended

version of form ET1 that will invite Claimants to indicate, by way of a tick box, whether their claim includes a protected disclosure and whether they consent to the tribunal passing the claims on to one or more relevant authorities on a prescribed list.

Banks and large institutions rarely allow whistle blowing claims to reach tribunal, and this change will add to their reluctance. This increases the negotiation leverage for employees.

Wearing of religious symbols

In the case of *Eweida v British Airways* the Court of Appeal will consider whether it was unlawful to prohibit the visible wearing of a cross and in particular whether an individual has to show that her belief is shared in order to establish indirect discrimination. The current position is that a cross is not treated as being a compulsory religious symbol and as such an employer can prohibit an

employee wearing a cross to work. In contrast the refusal to allow a Sikh to wear a turban, which is a requirement of his religion, is discriminatory.

The case has now been heard by the Court of Appeal and we expect its decision shortly.

How serious does a belief have to be in order to be protected?

There were a few raised eyebrows at the end of last year when an Employment Tribunal and Employment Appeals Tribunal both agreed that a belief in man-made climate change and the existence of a moral duty to live in a way that mitigates or avoids it, was potentially capable of being a "philosophical belief". The courts ruled it was capable of being a serious philosophical belief worthy of respect and therefore protected. However the tribunals

have also indicated that mere belief is not enough, it must be a precept which informs and dictates the way an individual lives and acts.

Mr Nicholson who is bringing the claim against his former employers still has to show that he genuinely held this belief and that he was discriminated against because of doing so. We wait for the judgment later this year.

Awards and thresholds

From 1st February 2010 the maximum compensatory award will decrease from £66,200 to £65,300. This is the first time that there has been a decrease in a compensatory award and is a result of a 1.4% decrease in the RPI between September 2008 and September 2009.

Maternity, paternity and adoption pay rises from £123.06 to £124.88 per week from April 2010.

The weekly earnings threshold for statutory maternity pay, statutory paternity pay, statutory adoption pay and statutory sick pay will rise from £95 to £97 from April 2010.

And finally... the snow

During the last weeks of 2009 and the first two weeks of 2010, severe weather conditions have had a considerable financial impact on employers and their business in the UK with staff absenteeism reaching nearly 14% and costing UK businesses in the region of £0.5 billion. With further snow forecast for February, employers should plan ahead and put in place systems to deal with the issues surrounding employees during extreme weather.

Some lessons which have been learned from recent experience:

- Put in place and test remote working and contingency IT solutions
- Consider paying for key employees to stay in a hotel near to work
- Review your written policies: clarity must be given about whether employees are to be paid (generally this is not required but the expectation is that employees will be paid, and in fact most employers do)

- Employees have a statutory right to unpaid time off to care for dependants and this will be particularly relevant for those who are affected by the closure of nurseries and schools
- Employees should be required to tell their employer about their travel problems, but if you have genuine concerns regarding an employee's ability to get in to work you should investigate potential abuses and consider appropriate action

Over the years there has been a move for businesses to adopt IT solutions to deal with workplace issues and the recent weather conditions have reaffirmed the importance of doing so. However, remote working not only deals with the one-off crises which could prevent staff coming in to work but also assists with flexible working patterns. Since we are seeing more family-friendly legislation being proposed, businesses will be expected to have measures in place to accommodate those employees who wish to take the benefit of this legislation.

Disclaimer

These notes are intended only as a summary of developments and not as a definitive statement of the law. Advice should always be taken in individual circumstances.