

Report to East of England Regional Assembly

Item 8

Regional Council

25 September 2007

Subject: Employment Legislation Update

Report by: Regional Employers Team

Purpose

To update members with regard to the latest position on Employment Law.

Recommendation

Report for information

EMPLOYMENT LEGISLATION THAT CAME INTO FORCE DURING THE LAST 12 MONTHS:	
Age Discrimination - Equal Treatment Directive (2000/78/EC). Member States were required, under the EC Equal Treatment Framework Directive, to introduce legislation prohibiting discrimination on the ground of age, resulting in the Employment Equality (Age) Regulations 2006. Under the age regulations law, a default retirement age of 65 was set, and employers wanting to retire employees at an earlier age have to justify it. Employees also have a right to request working past the default retirement age, which the employer is under a duty to consider. The upper age limits on unfair dismissal and redundancy pay will be removed. Further information is available at: http://www.dti.gov.uk/employment/discrimination/age-discrimination/index.html	1 October 2006
Employment Act 2002 (Amendment Order) 2006. The legislation extended the scope of the statutory dispute resolution procedures to include disputes between an employer and an information and consultation representative or a representative appointed under the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006.	1 October 2006
Trade Union and Labour Relations (Consolidation) Act 1992 Amendment to clarify that the consultation process for collective redundancies must end before any redundancy notices are actually issued. More details are available on the Department of Trade and Industry website: http://www.dti.gov.uk/consultations/Open/page28162.html	1 October 2006
National Minimum Wage Regulations 1999 (Amendment) Regulations 2006 increased the rate of the national minimum wage. The main rate rose from £5.05 to £5.35 per hour and the development rate from £4.25 to £4.45 per hour. The rate for workers aged 16 to 17 years increased from £3.00 to £3.30.	1 October 2006
Disability Discrimination Act 2006. The remaining provisions, including those relating to the duty to promote disability equality which was placed on the public sector (this parallels the Race Relations Amendment Act) were brought into force.	4 December 2006
Accession (Immigration and Worker Authorisation) Regulations 2006 made provision for the entitlement of a limited number of nationals of Bulgaria	1 January 2007

and Romania to reside and work in the United Kingdom on the accession of those states to the European Union on 1 January 2007. The Regulations can be viewed on the OPSI website. http://www.opsi.gov.uk/SI/si2006/20063317.htm	
Employment Rights (Increase of Limits) Order 2006 increased the limits applying to certain awards of employment tribunals and other amounts payable under employment legislation. The limit on the amount of the compensatory award for unfair dismissal increases from £58,400 to £60,600. The maximum amount of 'a week's pay' for the purpose of calculating basic or additional awards of compensation for unfair dismissal or redundancy payment increases from £290 to £310. The Order can be viewed on the OPSI website at: http://www.opsi.gov.uk/si/si2006/20063045.htm	1 February 2007
Work and Families Bill, Family related leave. Paid maternity leave was extended from six months to nine, as was paid statutory adoption leave. Guidance to the regulations can be viewed at: http://www.dti.gov.uk/employment/workandfamilies/maternity-leave-pay/index.html	6 April 2007
Information and Consultation of Employees Regulations 2004: extended the duty on employers to make available a formal information and consultation procedure to all businesses employing at least 100 employees. The Regulations can be viewed at: http://www.opsi.gov.uk/si/si2004/20043426.htm	6 April 2007
Equality Act 2006: placed a duty on public bodies to promote gender equality. The relevant sections of the Act, which amend the Sex Discrimination Act 1975, can be viewed at: http://www.opsi.gov.uk/acts/acts2006/60003--e.htm#83 . To reinforce the duty, the Equal Opportunities Commission introduced a new code of practice. The code is available at: www.eoc.org.uk/default.aspx?page=15016 .	6 April 2007
Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 extended to undertakings with more than 100 employees. Guidance on the Regulations is available on the Department for Work and Pensions website at: http://www.dwp.gov.uk/publications/dwp/2005/occ_pen_schemes/occ_personal_pens_schemes_regs06.pdf	6 April 2007
Construction (Design and Management) Regulations 2006 consolidated the Construction (Design and Management) Regulations 1994 and the Construction (Health Safety and Welfare) Regulations 1996 into one set of Regulations. Clarifying health and safety obligations in construction, including restructuring the requirements so that they are grouped according to categories of duty holder. The regulations can be viewed at: http://www.opsi.gov.uk/SI/si2007/20070320.htm	6 April 2007
Local Government Pension Scheme (Amendment) (No 2) Regulations 2007 came into force. The Regulations made amendments to the Local Government Pension Scheme; changes include increasing the maximum period of augmentation of a member's membership of the scheme to ten years. The Regulations can be viewed on the OPSI website at: http://www.opsi.gov.uk/si/si2007/20071488.htm	21 June 2007
Health Bill - Part 1 introduced a smoking ban in England in all enclosed work spaces. Guidance on the application of the regulations for employers and individuals can be viewed at: http://www.smokefreeengland.co.uk/	1 July 2007
Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007 came into force. The Regulations contained provisions that related to smoke-free places (premises and vehicles) and set out the fixed penalty forms. The Regulations can be viewed on the OPSI website at: http://www.opsi.gov.uk/si/si2007/20070760.htm	1 July 2007
Smoke-free (Signs) Regulations 2007 came into force. The Regulations contained requirements that related to the display of no-smoking signs in smoke-free premises and vehicles in England. Guidance on the application of	1 July 2007

the regulations for employers and individuals can be viewed at: http://www.smokefreeengland.co.uk/	
Education (School Teacher Performance Management) (England) Regulations 2006 provided for the management and review of the performance of teachers and required governing bodies and local education authorities to establish and implement a performance management policy for their teachers. The regulations can be viewed on the OPSI website at: http://www.opsi.gov.uk/si/si2006/20062661.htm	1 September 2007
Employment Equality (Sexual Orientation) (Religion or Belief) (Amendment) Regulations 2007 come into force. The Regulations make it unlawful for a training provider to discriminate in the arrangements that it makes in determining to whom it should offer training. The regulations can be viewed at: http://www.opsi.gov.uk/SI/si2007/20072269.htm	14 September 2007

<u>FORTHCOMING LEGISLATION</u>	
<p>Annual Leave (Amendment to Working Time Legislation) Regulations 2007 increase the minimum statutory holiday entitlement to 24 days. Guidance has been published by the Department for Business, Enterprise and Regulatory Reform (previously the DTI) and can be viewed at: http://www.dti.gov.uk/employment/holidays/index.html</p>	1 October 2007
<p>Increase in the national minimum wage (NMW). The NMW rate per hour for workers aged 22 or above will rise from £5.35 to £5.52; for workers aged 18 to 21, the rate will rise from £4.45 to £4.60; and for workers aged under 18 who have ceased to be of compulsory school age, the rate will rise from £3.30 to £3.40. The regulations can be viewed at: http://www.opsi.gov.uk/si/si2007/20072318.htm</p>	1 October 2007
<p>Employment Equality (Sex Discrimination) Regulations 2005 changed as a result of judicial review. The Equal Opportunities Commission was recently successful in an application for judicial review Regulations, which amended the Sex Discrimination Act 1975. The High Court found that the Regulations did not adequately implement the Equal Treatment Directive and the Government is obliged to make further amendments to ensure equality in the provision of goods and services. Further details can be found on the Women and Equality Unit website at: http://www.womenandequalityunit.gov.uk/legislation/</p>	1 October 2007
<p>Flexible Working (Eligibility, Complaints and Remedies) (Amendment) (No 2) Regulations 2007. The Regulations amend the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002 to redefine 'adopter' to extend the definition to those who are adopting a child, whether domestically or intercountry, where the child has not been placed with those adopters by a UK adoption agency. The regulations can be viewed at: http://www.opsi.gov.uk/si/si2007/20072286.htm</p>	1 October 2007
<p>Equality Bill will introduce the Commission for Equality and Human Rights (CEHR), a single equality body merging the EOC, CRE and DRC and covering the 'new' strands of discrimination law - religion or belief, sexual orientation, and age. The Bill will also make unlawful discrimination on the grounds of religion or belief in the provision of goods and services, and create a duty on public authorities to promote equality of opportunity between men and women (the gender duty). For further information see the CEHR website at: http://www.cehr.org.uk/</p>	October 2007
<p>Data Protection Act 1998. The full provisions of this Act must be met by 24 October 2007, including manual filing systems in existence before 24 October 1998.</p>	24 October 2007
<p>Tribunals, Courts and Enforcement Act 2007. The Act changes the titles of the Employment Tribunals and Employment Appeals Tribunal to First-tier Tribunal and Upper Tribunal respectively, in addition, tribunal chairmen will be called 'employment judges'. The Act can be viewed on the OPSI website at: http://www.opsi.gov.uk/acts/acts2007/20070015.htm</p>	To be confirmed
<p>Corporate Manslaughter and Corporate Homicide Act 2007 introduces a new offence of corporate manslaughter (corporate homicide in Scotland), which will allow organisations to be prosecuted for management failures that lead to the deaths of employees and others. The Act can be viewed on the OPSI website at: http://www.opsi.gov.uk/acts/acts2007/ukpga_20070019_en_1</p>	6 April 2008
<p>Information and Consultation of Employees Regulations 2004 extend the duty on employers to make available a formal information and consultation procedure to all businesses employing at least 50 employees. The Regulations can be viewed at: http://www.opsi.gov.uk/si/si2004/20043426.htm</p>	6 April 2008
<p>Occupational and Personal Pension Schemes (Consultation by</p>	6 April 2008

<p>Employers and Miscellaneous Amendment) Regulations 2006 extended to undertakings with more than 50 employees. Guidance on the Regulations is available on the Department for Work and Pensions website at: http://www.dwp.gov.uk/publications/dwp/2005/occ_pen_schemes/occ_person_al_pens_schemes_regs06.pdf</p>	
<p>Annual Leave (Amendment to Working Time Legislation) Regulations 2007 increase the minimum statutory holiday entitlement to 28 days. The guidance and the draft statutory instrument can be viewed at: http://www.dti.gov.uk/files/file36449.pdf</p>	1 October 2008
<p>Safeguarding Vulnerable Groups Bill will introduce a centralised vetting system for people banned from working with children and vulnerable adults. Employers will be able to make checks online, with information updated straight away when any individual is added to the list. Employers will be informed where possible if an individual becomes barred. There will be fines of up to £5,000 for employers that knowingly employ individuals on the list or fail to make the relevant checks. The Bill can be viewed on the UK Parliament website at: http://www.publications.parliament.uk/pa/ld200506/ldbills/079/2006079.htm</p>	Autumn 2008
<p>The Employment Simplification Bill may repeal the statutory dispute resolution procedures and implement a package of replacement measures to encourage early/informal resolution; strengthen the NMW enforcement regime; and amend trade union membership law (in light of the European Court of Human Right's judgment in <i>Aslef v UK</i>) so that trade unions can expel members on the basis of their membership of a political party. For further information on the possible bill please see the Cabinet Office 'Draft Legislative Framework' at: http://www.cabinetoffice.gov.uk/publications/reports/governance/governance.pdf</p>	2008
<p>The Education and Skills Bill would oblige employers in England and Wales to release young people for education or training, and check whether a young person is participating in education or training before employing them. For further information on the possible bill please see the Cabinet Office 'Draft Legislative Framework' at: http://www.cabinetoffice.gov.uk/publications/reports/governance/governance.pdf</p>	2008
<p>The Pensions Bill would introduce the automatic enrolment of eligible employees into, and mandatory employer contributions to, qualifying pension schemes. For further information on the possible bill please see the Cabinet Office 'Draft Legislative Framework' at: http://www.cabinetoffice.gov.uk/publications/reports/governance/governance.pdf</p>	2008
<p>The National Insurance Contributions Bill would allow the Government to increase the Upper Earnings Limit and align it with the start of the higher rate of income tax. For further information on the possible bill please see the Cabinet Office 'Draft Legislative Framework' at: http://www.cabinetoffice.gov.uk/publications/reports/governance/governance.pdf</p>	2008
<p>Work and Families Act 2006. The Act proposes an extension of paid maternity and adoption leave to 12 months, some of which will probably be transferable to the partner. Details of the recent consultation can be found at: http://www.dti.gov.uk/consultations/page39405.html</p>	2009/2010
<p>Revitalising Health and Safety and Securing Health Together Strategy Targets. These two complementary government strategies set national targets for the reduction of incidences of occupational ill health.</p>	2010
<p>Working Time Directive implementing the 2004 EC proposals</p>	TBC
<p>Pensions Act 2007. The number of years' contribution required to achieve a full basic state pension will be reduced to 30 years for both men and women.</p>	6 April 2010

The Act can be viewed on the OPSI website at: http://www.opsi.gov.uk/acts/acts2007/20070022.htm	
State pension age rises to 66 years The Pensions Act 2007 raises the state pension age from 65 to 66 years to reflect the ageing nature of the population. See link to the Act above.	Between 2024 and 2026
State pension age rises to 67 years The Pensions Act 2007 raises the state pension age from 66 to 67 years to reflect the ageing nature of the population. See link to the Act above.	Between 2034 and 2036
State pension age rises to 68 years The Pensions Act 2007 raises the state pension age from 67 to 68 years to reflect the ageing nature of the population. See link to the Act above.	Between 2044 and 2046

<u>CONSULTATIONS</u>	
Paper	Closing Date
<p>Consultation on the National Minimum Wage</p> <p>The Consultation document seeks written submissions on any of the issues covered by the Low Pay Commission's Terms of Reference. In addition the Low Pay Commission are also interested to hear views on compliance and enforcement of the minimum wage.</p> <p>To view the consultation document please go to: http://www2.lowpay.gov.uk/lowpay/LPCConsultationLetter_for2008Report.doc</p>	<p>28 September 2007</p>
<p>Councils' Proposals for Unitary Local Government: An Approach to Implementation</p> <p>On 25 July 2007, the Government announced that nine proposals for unitary status would go ahead towards implementation. This paper seeks views on the approach to implementation. To view the consultation paper please go to: http://www.communities.gov.uk/publications/localgovernment/unitarycouncilsimplementation</p>	<p>28 September 2007</p>

OTHER

Fair Dismissals following Bullying

The Court of Appeal has upheld the EAT's decision that a dismissal was fair where the employee was on long-term stress-related sick absence, caused by bullying and mismanagement at work.

The Court of Appeal ratified the EAT's reasoning, holding that:

- the fact that the employer had caused the incapacity in question does not prevent them from fairly dismissing the employee
- the real question is whether the employer acted reasonably 'in all the circumstances' - and the circumstances include the fact that the employer was responsible for the original absence
- where the employer is responsible for an employee's incapacity, it should normally be expected to "go the extra mile in finding alternative employment for such an employee, or to put up with a longer period of sickness absence than would otherwise be reasonable".

McAdie v Royal Bank of Scotland

Removal of On-Call Allowance Not Unlawful

The CA has confirmed the EAT's findings that when an employee was taken off an on-call rota for health and safety reasons it was permissible to no longer pay the employee the related on-call allowance.

Camden Primary Care Trust v Atchoe.

GMB did not Discriminate

The EAT has overturned a Employment Tribunal decision that the GMB trade union subjected some of its female members to indirect sex discrimination and victimisation when it reached a settlement with the employing Local Authority. The settlement provided significant pay protection for staff who were facing a decrease in salary, but did not include the full 6 years back pay which some female staff could have claimed under equal pay legislation. In addition the GMB did not support the affected female employees when they decided to bring equal pay claims against the local authority.

The EAT held that the settlement of the claims was a legitimate aim considering the financial status of the authority, and that while it might not agree with GMB's approach, it could not be said that it was not proportionate. Accordingly, there had been no indirect discrimination. The EAT further held that there was no evidential basis on which the tribunal could have found that GMB victimised Allen in failing to support her equal pay claim, particularly as it was not in a position to do so since she had instructed solicitors.

GMB v Allen and ors

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