



EMPLOYMENT TEAM NEWSLETTER

Welcome to Hardwicke Building's inaugural Employment Team newsletter. We are delighted to present this newsletter to you, keeping you informed of important cases and significant changes in employment law as they arise. We hope this newsletter will be of use to all our readers and are, of course, always interested in hearing your views. Any suggestions and ideas are welcome and should be addressed to Louise Poppelwell, Marketing Manager at Hardwicke Building on 020 7242 2523 or by email louise.poppelwell@hardwicke.co.uk

Important Changes from October 2008

Some key changes in the law will take effect this month. We kick off our first ever Employment Team newsletter by outlining them for you here:

The **National Minimum Wage Regulations 1999 (Amendment) Regulations 2008** raise the NMW from 1 October 2008.

- The principal rate has gone up from £5.52 to £ 5.73.
- The rate for those between 18 and 21 has gone up from £4.60 to £4.77
- The rate for those under 18 has gone up from £3.40 to £3.53.

The **Statutory Sick Pay (General) (Amendment) Regulations 2008** will change the practice when an employee moves from one employer to another. Until now, SSP claimed by an employee from their first employer was set off against SSP entitlement for the year as against a subsequent employer. This practice will be discontinued as from 27 October 2008.

The **draft Maternity and Parental Leave etc and Paternity and Adoption Leave (Amendment) Regulations 2008** bring an employee's rights during Additional Maternity Leave into line with existing rights during Ordinary Maternity Leave. The new system is to come into force in relation to employees whose expected week of childbirth begins on or after 5 October 2008.

Age Discrimination and Justification...watch this space!

The Advocate-General has recently handed down his opinion in **Incorporated Trustees of the National Council on Ageing (Age Concern) v Secretary of State for Business, and Regulatory Reform (The Heyday Appeal)** recommending that the ECJ dismisses challenges by Age Concern to the lawfulness of **Regulations 3 and 30 of the Employment Equality (Age Discrimination) Regulations 2006**.

The AG set out the question that Courts should ask in compulsory retirement cases:

- Is a rule allowing employers to compulsorily retire employees when aged 65 or over justified by reference to a legitimate aim?

- If such an aim can be identified, then the means employed to achieve it must be 'appropriate and necessary'

The AG has recommended that the European Court finds:

- that Regulation 30 which allows employers to dismiss employees aged 65 or over by reason of retirement, is not incompatible with the **Equal Treatment Framework Directive** provided the regulation is objectively justified under national law; and
- a general justification defence should be allowed, and that it is not necessary for the Regulations to define specific actual conduct which can be justified.

The ECJ is likely to give its ruling in early 2009.

Equal Pay: comparator and time limits

This area is one of the most vexed and difficult there is. Recently there have been several developments including:

Walton Centre for Neurology and Neuro Surgery v NHS Trust v Bewley 2008 IRLR 588

The EAT has held that an equal pay complainant cannot use a 'successor' employee as a comparator, overturning previous an EAT decision in Diocese of Hallam Trustee v Connaughton.

Cumbria County Council v Dow (Number 2) 2008 IRLR 109

Where an employee has been given new contractual terms during the course of their employment which amounts to a **new contract** as opposed to a variation of the old contract, the six month time limit within which to present a claim to the Tribunal will run from the date of the termination of their old terms.

Notice of Holidays and WTR

The EAT has confirmed that an agreement between an employer and employee can override statutory rules in relation to holiday.

In the case of **Industry & Commerce Maintenance v Briffa** [2008] EAT/0215/08, an employer gave an employee one weeks notice of termination of employment and required the employee to take 4 days holiday in his period of notice so as to use up his entitlement.

An ET held this was in breach of Reg 15 the WTR which required double the notice of holiday dates to the actual time to be taken.

The EAT overturned the ET's decision and held that Reg 15 can be overridden by a 'relevant agreement' which includes a contractual term.

Statutory Dismissal Procedure and Delay

The Court of Appeal has held in **Selvarajan v Wilmot and ors** [2008] EWCA Civ 862 that the non-compliance with a procedural requirement of the statutory procedures dismissal procedure does not amount to non-completion of the procedure.

The Court noted that **S.98A(1) ERA** requires three things for automatic unfair dismissal to be established:

- that the disciplinary and dismissal procedure applies;
- that the procedure was not completed; and
- that the non-completion of the procedure was wholly or mainly attributable to the employer's failure to comply.

Where the procedure has been completed, albeit with delay, non-compliance will not arise as an issue as 'completion' is given its ordinary meaning.

Upcoming Events

Disability Discrimination: Where To Now?

Tuesday 21st October, 6:30-7:30pm at Hardwicke Building

This informative seminar covers the following topics:

- **DDA post Malcolm with Zeeshan Dhar**
- **Service Providers: Managing the Disabled Customer, with Christopher Camp**
- **Sickness absence and dismissal with Sarah Malik**

CPD Points

This seminar will be CPD accredited.

Hardwicke Building will not be charging for this seminar. If you would like to attend or have any queries please do not hesitate to contact **Louise Poppelwell** on **020 7242 2523** or email louise.poppelwell@hardwicke.co.uk

The members of Hardwicke's Employment Team have specialised skills and experience in all aspects of employment law including matters such as discrimination, unfair dismissal and redundancy, restrictive covenants as well as non-contentious work. We represent both employers and employees via conventional means in addition to direct access.

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Clerks: Danny O'Brien & Daniel Kemp

Nigel Jones QC 1976 (1999)

Stephen Lennard 1976

Barbara Hewson 1985

PJ Kirby 1989

Colm Nugent 1992

Christopher Camp 1996

David Lewis 1997

Zeeshan Dhar 1999

Sarah Malik 1999

David Lawson 2000

Morayo Fagborun-Bennett 2004

Thomas Bell 2006

This newsletter was edited by Sarah Malik and Zeeshan Dhar. For further information on the Hardwicke Employment Law Team and the services we offer, please visit our website at www.hardwickebuilding.co.uk

