

IN FOCUS

DRA to be retired

The Government is consulting on its plans to abolish the default retirement age. Currently, employers can require employees to retire at age 65, but under the Government's proposals there will be no fixed retirement age from 1 October 2011.

The proposals are for the default retirement age and associated statutory retirement procedures to cease to apply from 6 April 2011. Transitional arrangements will mean that the current statutory procedures will continue to apply to retirements where the employee has been notified of the retirement prior to 6 April 2011 and the retirement will take effect prior to 1 October 2011. However, from 1 October 2011, any dismissals will have to be conducted in accordance with normal unfair dismissal principles. The Government is considering issuing guidance or a code of practice to assist employers and employees when dealing with dismissals of employees at or over the current retirement age.

The proposals would still allow an employer to impose a compulsory retirement age – if it can be objectively justified. In practice, the ability to do so will be very limited and will probably only apply where there is a clear justification for such a retirement age, such as on health and safety grounds.



Sharing the caring

The Government has announced that, from April 2011, the right to request flexible working will be extended to parents of children under 18 years old. Currently the right to request flexible working is available to parents of children under 17 years old, parents of disabled children under 18 years old and carers of certain adults. It is expected that the extension in the right to request flexible working will benefit about 288,000 more people.



The Government has also confirmed that it will retain the Additional Paternity Leave Regulations as an interim measure to encourage shared parenting. The Regulations will apply to parents of children due on or after 3 April 2011 and will allow employed fathers to take up to six months' additional paternity leave, if the mother returns to work before the end of her maternity leave period.

Signalling the Government's intention to bring forward proposals to create more flexible, family-friendly workplaces, the Employment Relations Minister, Edward Davey, has stated that the plans he will unveil later this year are "much more ambitious".

In a consultation that will be launched later this year the Government will be looking at the design of a new system of flexible parental leave and how to extend the right to request flexible working to all employees. The consultation is likely to include details of a parental leave system that encourages shared parenting from the earliest stages of pregnancy, as stated in the Coalition Government's legislative programme that was published earlier this year.

Welcome

Welcome to the autumn edition of **In Focus**, our quarterly update keeping you informed of the latest developments in employment law.

For further information on employment issues, please email chris.seaton@burges-salmon.com

Green issue

In future we intend to distribute our publications by email to reduce our environmental impact. This also has the advantage of eliminating the delay in printing and posting.

For some of you this will be the first time that you have received one of our publications by email. If it is, we hope you agree with our policy.

If you have received this newsletter by post, please let us have an email address for future mailings.

To contact us with your email address or if you have a particular need to continue to receive a copy by post, please email marketing@burges-salmon.com or write to Jayne Taylor at our Bristol address over the page.



Telling tales

The recent case of *Bullimore v Potheary Witham Weld Solicitors*, has highlighted some of the pitfalls for employers in providing references.

This case involved a firm of solicitors who provided a bad reference to a prospective employer of an ex-employee who had brought a sex discrimination claim against the firm. The reference referred to the sex discrimination claim, the ex-employee's poor relationship with the partners and said that her opinions could be inflexible. As a result of the reference, the prospective employer withdrew its job offer and the ex-employee brought a claim of victimisation.

The case went to the EAT, and it held that as a matter of policy and fairness, the previous employer should be liable for the direct consequences of its actions. It was "evidently foreseeable" that the prospective employer would react as it did and its reaction was "a direct and natural consequence of the supply of the information" by the past employer, even though the reactions of the prospective employer were also unlawful. The case has been remitted back to the Tribunal to consider the claimant's loss of earnings claim.

Employers should always take care in providing a reference to ensure that the information is true, accurate and fair. The reference must not give a misleading impression through omission and generally it is better to keep to brief factual details. Commenting on a discrimination claim brought by a past employee is likely to lead to a claim for victimisation.



Greasing the palm

The Bribery Act 2010 is due to come into force in April 2011, and the Ministry of Justice is now consulting on the draft guidance about what steps commercial organisations should be taking to prevent bribery. The consultation period will end on 8 November 2011 and a response to the consultation is expected in early 2011 alongside the final

version of the guidance.

The draft guidance sets out six principles that are intended to give commercial organisations a starting point for planning, implementing, monitoring and reviewing their anti-bribery regime.

One for all

The majority of the employment related provisions of the Equality Act came to force on 1 October 2010. Guidance for employers has been issued and is available on the Equality and Human Rights Commission's website. The three statutory Codes of Practice on Employment, Equal

Pay, and Services, Public Functions and Associations have also now been published and were laid before Parliament on 12 October 2010. Key points for employers are to ensure policies are consistent with the new Act and that compromise agreements satisfy, and refer to, the Act.

Naming and shaming

From 1 January 2011, employers who deliberately breach the national minimum wage rules will be publicly named by the Department for Business, Innovation and Skills (BIS).

The new sanction was announced at the same time as the new rates for the national minimum wage came into effect

on 1 October 2010. The new rates are:

- £5.93 per hour for workers aged 21 and over
- £4.92 per hour for 18 to 20 year olds
- £3.64 per hour for 16 to 17 year olds

News in brief

- The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations came into force on 1 October 2010 and amend the existing Conduct of Employment Agencies and Employment Businesses Regulations.
- The Government has confirmed that a decision on the Vetting and Barring Scheme, which was postponed pending a review, will be made by

December 2010.

- The Office for Disability Issues is currently consulting about its proposed changes to the guidance on matters to be taken into account in determining questions relating to the definition of disability. Consultation closes on 31 October 2010 and the updated guidance is not expected to come into force until April 2011.

In the office

Congratulations to Emily Greswell and her husband, Will, on the birth of their first child, a son.

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