

IN FOCUS

Welcome

Welcome to the spring 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

Employment tribunals have now been given the power to pass on details about whistleblowing claims to the appropriate statutory regulators. The aim is that the regulators can then take action, where appropriate, in accordance with their own practices and procedures to address instances of alleged unlawful, fraudulent or dangerous behaviour.

The new powers apply to cases brought on or after 6 April 2010 and will mean:

- a claimant can tick a box on the tribunal form to indicate whether their claim includes allegations of whistleblowing and, if so, that they wish the employment tribunal to refer the allegations onto the appropriate regulator.
- when the box has been ticked and the employment



tribunal identify a protected disclosure, it will pass the information on to one or more of the relevant regulators on a prescribed list.

- both parties to the proceedings will then be contacted in writing by the employment tribunal to confirm that a regulator has been contacted and a copy of the tribunal form (or extract of it) has been disclosed to the regulator.

All for one and one for all

The Equality Act has now become law and some key provisions for employers will come into force from October 2010. The Act will mean that all discrimination legislation will be housed under one roof. The Act will also:

- harmonise the core provisions of the different types of discrimination law (October 2010);
- extend the scope for employers to use positive action to combat discrimination (October 2010);
- increase pay transparency by making secrecy clauses unenforceable in certain circumstances (October 2010);
- potentially introduce gender pay and equality reporting

for public sector employers (April 2011) and private sector employers (April 2013);

- prohibit employers from asking pre-employment health questions of a job applicant, other than in certain limited circumstances, for example, to establish whether the applicant will be able to carry out a function that is intrinsic to the work concerned.

More detail about The Equality Act 2010 and what it means for employers is available in our briefing available at www.burges-salmon.com/practices/employment/publications/default.aspx

New Codes for old

The Equality and Human Rights Commission (EHRC) has published three new draft statutory codes of practice. These codes of practice cover:

- Employment
- Equal Pay

- Services, Public Functions and Associations

The final versions of the codes of practice are due to come into force in October 2010, after the key provisions of the Equality Act come into force.

More leave for parents

In March the EU Council of Ministers adopted a new Parental Leave Directive. The new Directive replaces the current Parental Leave Directive, and increases parental

leave entitlement from 3 months to 4 months. Member States have two years to implement it.



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It's showtime!

The EHRC has published proposals for voluntary gender pay reporting. These measures are aimed at private sector employers with 250 or more employees. Under the measures, employers are encouraged to measure and share information on the differences between the salary of male and female employees based on a menu of different options.

Although the Equality Act contains powers for the Government to introduce gender pay reporting, the

Government has indicated that it will not use this power before 2013 for private sector employers. The EHRC has indicated, however, that employers that meet the voluntary measures will be given a moratorium of two years during which the EHRC will not conduct any formal enquiry in their pay practices. This will not, however, affect individual rights to bring discrimination or equal pay claims.

Blacklist for blacklists

New regulations came into force in March to prohibit blacklisting of workers due to their trade union membership or activities.

Subject to certain exemptions, it is now unlawful to compile, use, sell or supply "prohibited lists" (e.g. a list that contains details of current or former trade union members or details of those taking part in trade union activities). The regulations also create new rights for workers not to be subjected to a detriment or dismissed for a reason connected to a prohibited list.

It will also be unlawful to refuse to employ someone for a

reason which relates to a prohibited list or for an employment agency to refuse to offer its services to someone for such a reason. Employers should note that in addition to any compensation (including injury to feelings) that may be awarded by the employment tribunal against an employer that breaches the regulations, the Information Commissioner will also have the power to impose a fine of up to £500,000 for breach of the Data Protection Act 1998.

The Department for Business Innovation and Skills has published guidance that is available from www.bis.gov.uk

Going up

From 4 April, the new rates for statutory maternity pay (SMP), statutory paternity pay (SPP) and statutory adoption pay (SAP) are £124.88 per week (an increase from £123.06 per week). Statutory sick pay (SSP) will remain the same at £79.15 per week.

An increase in the national minimum wage from 1 October 2010 has also been announced. The new rates will be:

- £5.93 per hour for workers aged 21 and over (a 2.2% increase on the current £5.80 rate);
- £4.92 per hour for 18-20 year olds (a 1.9% increase on the current £4.83 rate); and

- £3.64 per hour for 16-17 year olds (a 2% increase on the current £3.57 rate).

Please note that the adult rate will apply to 21 year olds from October (it currently only applies to those aged 22 and over).

The Government has also announced that it has accepted a recommendation by the Low Pay Commission to introduce a minimum wage for apprentices of £2.50 per hour. The new rate will apply to those apprentices who are under 19 or those that are aged 19 and over but in the first year of their apprenticeship.

Full refund available

Employers will need to consider allowing employees who are sick whilst on holiday to take their holiday after they have recovered and to carry over their holiday entitlement into the next holiday year, if the employee requests this.

For more information please see our email alert at www.burges-salmon.com/practices/employment/news/news_item?id=8092.

News in brief

- From 6 April 2010, employees in businesses that employ 250 or more people have a new right to request time off for study or training. For more details please see our Time to Train briefing available at www.burges-salmon.com/news/Time_to_train.pdf
- Also on 6 April 2010 the Additional Paternity Leave regulations came into force and will have effect for parents of babies due on or after 3 April 2011. We set out details of these regulations in our briefing which is available at http://www.burges-salmon.com/Practices/employment/Publications/Additional_Paternity_Leave.pdf
- There have been a number of changes to the immigration rules from 6 April. For more details please see our email alert at http://www.burges-salmon.com/practices/employment/news/news_item.aspx?id=8155
- Doctors will be issuing fit notes from April. More details about these are available in our email alert at www.burges-salmon.com/practices/employment/news/news_item.aspx?id=8068

In the office

Congratulations to **Amy Tudor** on her marriage to Mark. From 24 April she will be known as Amy Whiting.

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