

The Employment Law Maze

Employment Law Bill 2007

The Employment Law Bill was introduced in December 2007. The Bill is currently being debated in Parliament and is expected to receive Royal Assent by Summer 2008.

The main provision that will be of concern to all employers, is that the statutory dispute resolution procedures will be abolished. This means that it will no longer be mandatory to follow statutory minimum disciplinary and grievance procedures.

These procedures were aimed at resolving disputes in the workplace and thereby reducing the number of claims to the employment tribunal. Instead, employees have sought legal advice at an earlier stage when disciplinary action has been taken, and the number of claims for unfair dismissal has increased year on year.

As the law stands, an employer will be judged to have automatically unfairly dismissed an employee, if they have not followed the statutory dismissal procedure. Therefore an employer will be liable for unfair dismissal even if there was a fair reason for the dismissal.

Furthermore, compensation is increased by 10% to 50% for failure to follow either of the statutory procedures.

If and when the new provisions come into force, employers will still be required to act reasonably in all of the circumstances in dismissing an employee. The Employment Tribunal will be able to increase awards by up to 25% where the Employer has failed to apply a code of practice issued by ACAS on the way dismissals should be handled.

However, there will be no findings of automatic unfair dismissal for failure to follow statutory procedures, and there will be circumstances in which it will be reasonable for employers not to follow the ACAS code.

Employers are advised to continue to follow the statutory procedures. ■

If you would like to speak to one of the team to discuss this issue further please contact Matt Smith on 0151 647 9381 or email mys@lees.co.uk

Holiday pay

The Advocate General (AG) has handed down her Opinion in a case regarding holiday pay.

The European Court of Justice (ECJ) usually follows the AG's opinion and if it does so in this case, this will result in a significant change to UK law.

The AG has stated that workers have a right to accrue holiday pay whilst on sick leave, although they cannot take holidays whilst on sick leave.

The second part of the decision states that employers are required to pay employees for holiday entitlement accrued but not taken whilst on sick leave, even if the employee has been on sick leave for the full holiday year.

If the ECJ follows this opinion, employers will be required to make large payments in respect of accrued holiday pay upon dismissal, even where the employee has been on sick leave for the entire year.

The European Court of Justice's decision is awaited with interest. ■

Annual increase in compensation limits

Awards of compensation in unfair dismissal cases are composed of a Basic Award and a Compensatory Award. These awards are subject to statutory limits. The maximum compensation limits increased with effect from 1st February 2008.

A Basic award is calculated in the same way as a statutory redundancy payment. The maximum week's pay to be used in this calculation increases from £310 to £330.00 meaning that the maximum basic award (and the maximum statutory redundancy payment) increases from £9,300 to £9,900.

The Compensatory award is largely based on loss of earnings, benefits, pension rights etc. The maximum compensatory award increases from £60,600.00 to £63,000.00.

The new limits apply to

dismissals occurring from 1st February 2008 onwards.■

Disability discrimination

Another opinion of the Advocate General was handed down in February. The AG has stated that the Framework Directive prevents Disability Discrimination by association.

Associative discrimination takes place where an employee is discriminated against on the grounds of the disability of someone with whom they are associated. The classic example, is an employee who is treated less favourably by the employer because they are a carer for a relative.

UK law currently only prevents discrimination on the grounds of the employee's disability. If the European Court of Justice follows the AG's decision, the UK government will likely take steps to make UK law compatible with the Framework Directive.■

Our team

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Employment law is probably the most rapidly developing area of law within the UK.

Both employers and employees have rights and obligations and we are able to provide specialist advice on all aspects of employment law.

Our employment service is specifically aimed to create and encourage harmony in the employment relationship and to find workable solutions in areas of dispute.

Our team provide employment advice to employers in relation to all aspects of employment law including:

- Tribunal cases,
- Disciplinary matters,
- Grievance Procedures,
- Contracts,
- Policies,
- Transfer of Undertakings,
- Unfair dismissal,
- Discrimination,
- Redundancies.■

Other services Lees Solicitors LLP can provide for you and your business:

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