

The Employment Law Maze

Equality Bill

The Equality Bill has had its second reading in Parliament and will now be debated by the Public Bill Committee. The Government is likely to face some serious opposition to some of the clauses within the Bill.

The main reforms proposed by the Bill include:

- 1) Setting one definition of direct discrimination across all areas: A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
- 2) Defining indirect discrimination consistently across all areas, thus introducing indirect discrimination on the grounds of disability into law. A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's. A discriminatory provision, criterion or practice is one which puts, or would put, someone with a protected characteristic at a disadvantage in relation to an individual who did not share that characteristic.
- 3) "Pay secrecy" clauses will become less enforceable - an employee will not be bound by a "pay secrecy" clause if they have revealed their rate of pay

for the purposes of an equal pay claim.

- 4) A new definition of direct discrimination will prevent associative discrimination and perceptive discrimination across all areas.

"Associative discrimination" occurs when an employee is discriminated against because they are associated with a person who has a protected characteristic e.g. a carer of a disabled person.

"Perceptive discrimination" occurs when an employees is discriminated against because they are perceived to have a protected characteristic. e.g. a person is discriminated against because the employer believes them to be a Muslim.

- 5) Positive action to increase diversity in the workforce, including the power for employers to select an individual from an under-represented group if there are two or more equally suited candidates for a position; and the power for the Government to force large employers to report on the gender pay gap in their organisations.

The Bill is expected to be passed into law in Spring 2010 and come into force in Autumn 2010, but there are likely to be a number of changes to the Bill before then following debate in Parliament. ■

NHS Compensation Payment "irrational"

In *Gibb v Maidstone and Tunbridge Wells NHS Trust* the High Court held that a compromise agreement (an agreement settling all potential employment claims in return for a compensation payment) entered into between a NHS Trust and its Chief Executive was unenforceable.

It was held that the NHS Trust had acted outside of its powers because the compensation payment under the agreement was "irrationally generous".

Many people would like to see such a decision applied to the payment made by RBS to Sir Fred Goodwin. However, the courts would not have the power to review the decision of a private company in the same way that it can review those of public bodies such as the NHS. ■

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

Corporate Manslaughter a reality for employers

Cotswold Geotechnical Holding were recently the first firm to be charged with the criminal offence of corporate manslaughter under the Corporate Homicide Act 2007. One of their directors has also been charged with gross negligence manslaughter.

An employee of the company died whilst taking soil samples from a building site and, if convicted, the company could face an unlimited fine and the Director could face up to life imprisonment.

In cases of this nature, the death must be caused by a gross breach of the relevant duty of care. This means that the employer must behave in a way which is far below what can reasonably be expected in the circumstances.

Employers are advised to ensure that their Health & Safety leadership is of an appropriate standard; review their safety management systems and consider improvements and ensure that their organisations have a Health & Safety culture, so that every member of staff takes responsibility for Health & Safety issues.■

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

- Company & Commercial Law
- Commercial Property
- Dispute Resolution
- Employment Law

Dispute resolution procedures

Further to the detailed article in our Winter newsletter, a number of changes to dispute resolution procedures came into force on 6 April 2009.

The statutory dismissal and grievance procedures were abolished and replaced by a new ACAS Code of Practice. A failure to follow the code of practice could lead to findings of unfair dismissal and up to a 25% uplift in compensation awards in tribunal cases.■

Budget update:

In the 22 April 2009 Budget, Alistair Darling announced an increase in the maximum weekly pay for the purpose of calculating redundancy payments from £350 to £380.

This translates to an increase in the maximum total redundancy payment payable by employers from £10,500 to £11,400. BERR has now announced that the increased rate will be introduced from 1st October 2009 and will apply to other payments such as the basic award in unfair dismissal claims.■

Our team

Running an efficient operation with minimum effort and maximum return is something most business people aspire to, but in reality the day-to-day management of many organisations can be hard.

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

Both employers and employees have rights and obligations and here at Lees 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.

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