

The Employment Law Maze

Dispute resolution procedures

The Employment Act 2008, which repeals the statutory dispute resolution procedures, has recently received Royal Assent and is expected to come into force in April 2009.

As the law currently stands, an employer will be judged to have automatically unfairly dismissed an employee if they have not followed the relevant statutory disciplinary or grievance procedure upon dismissal. Furthermore, compensation will be increased by 10% to 50% for failure to follow the applicable procedure. As a result, many employers face claims from employees for unfair dismissal which are not only guaranteed to succeed but also likely to result in uplifted compensation, even though on a basic level they had a fair reason for dismissing the employee.

The repeal of the procedures is good news for employers as there will no longer be a finding of automatic unfair dismissal where the employer has failed to follow such a procedure. However, employers will still be required to act reasonably in all of the circumstances in dismissing an employee. At the same time as repeal of the statutory procedures, a code produced by ACAS on disciplinary and grievance procedures will come into force. In most cases employers

will be expected to show that they have followed a procedure which accords with the ACAS Code in order to prove that the dismissal was fair.

The Employment Tribunal will be able to increase awards by up to 25% where a finding of unfair dismissal is made and the employer has failed to apply the ACAS code of practice. However, the Tribunal has more discretion as to whether or not to apply such an uplift and there is no longer a minimum uplift of 10%.

Therefore, employers should still apply disciplinary and grievance procedures and any company procedures should be reviewed in advance of April to ensure that they comply with the new ACAS Code. In particular, if company disciplinary procedures provide for a two step modified procedure, this should not be used. A three step procedure should be used in all cases, even for gross misconduct, prior to dismissal.

If employers do not already have such procedures, they are best advised to put them in place now and ensure that they comply both with current and future requirements. ■

Agency workers

The European Parliament has approved the European Council's proposals for a Temporary Agency Workers Directive.

The Directive will provide for treatment for agency workers in Europe equal to that of permanent workers from day one of their employment. This covers basic working and employment conditions such as pay, holidays, working time, rest periods and maternity leave, access to collective facilities and access to training.

However, such equal treatment need not be from day one where 'social partners' agree otherwise. In the UK, an agreement reached between the Government and the TUC and CBI will see agency workers receive equal treatment to permanent workers after 12 weeks of employment.

The Directive must be implemented in the next three years. ■

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

Employment Appeal Tribunal Results

The Employment Appeal Tribunal has held that a Christian employee did not suffer indirect discrimination on the grounds of her religion or belief when British Airways, insisted that she conceal the cross on her necklace.

The decision hinged on the fact that it was not a requirement of the Christian faith that a visible cross be worn. Therefore, the same principle should not be applied to other outward symbols of faith. ■

The Pensions Act 2008

The Pensions Act 2008 received Royal Assent on 26 November 2008. The Act is expected to come into force in 2012. From then, employers will have to automatically enrol employees

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into a personal accounts scheme or their own occupational or personal pension scheme.

Employers will also have to pay compulsory minimum contributions on behalf of their employees. ■

Unfair dismissal: Annual increase in compensation limits

The maximum limits on compensation for unfair dismissal are set to increase and will apply to dismissals occurring from 1st February 2009 onwards. The maximum basic award (calculated in the same way as a statutory redundancy payment) increases from £9,900 to £10,500. The maximum compensatory award (largely based on loss of earnings, pension, benefits etc) increases from £63,000 to £66,200. ■

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 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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