

focus on...

EMPLOYMENT LAW

Employment law has substantially developed over recent years. Revisions to and new legislation together with EC law can have costly effect for the unwary. The purpose of this focus on is to give an overview of how both employer and employee are affected.

Disability Discrimination Act 1995

This Act makes it unlawful to discriminate against current or prospective employees with disabilities because of a reason relating to their disability. Employers will be expected to make reasonable adjustment if their employment arrangements or premises which substantially disadvantage a disabled employee or disabled applicant. Discrimination is prohibited in relation recruitment, terms and conditions of employment, training, provision of benefits and dismissal.

Adjustments

There are no qualifying periods of employment before a claim can be presented and there is no age limit. Tribunals will be able to award unlimited compensation for disability Discrimination. Two codes of practice have been produced to help interpret the Act. Since December 1998 the remit of the DDA 1995 has been extended to cover employers with 15 or more employees, the previous threshold was 20.

Employment Rights Act 1996

This was a piece of consolidating legislation and provides the right for an employee not be unfairly dismissed. An employer who dismisses an employee without good reason or without following a fair procedure lays himself open to a claim for unfair dismissal. Applies to Employees as defined by the Act.

The qualifying period of continuous employment has been reduced from 2 years to one.

Employers are required to provide in writing a range of information to each new employee within two months of his or her appointment, including terms and conditions relating to hours, holidays and or holiday pay, sick pay, place of work, date of commencement of employment etc.

The Act gave protection to part time employees by providing that irrespective of the number of hours worked by part time employees were entitled to employment rights.

National Minimum Wage Act 1998

This Act brought into force the statutory national minimum wage of £3.60 per hour before deductions (£3 for 18 to 21 year olds and £3.20 for accredited trainees aged 22 or over in the first six months of a new job with a new employer), which applies to all workers over school leaving age working in the U.K.

Workers will have a contractual right to NMW and can pursue a claim for breach of contract or of an unlawful deduction from wages.

Contracting out is prohibited save through ACAS or a valid compromise agreement. There are criminal sanctions for breach of the Regulations.

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Public Interest Disclosure Act 1998 – Whistle Blowing

The Act provides public interest whistleblowers with protection against victimisation. Everyone in the workplace is provided with full protection from victimisation where they raise genuine concerns about malpractice. There are qualifying periods or age limits to restrict the application of this Act. Only a disclosure relating to malpractice qualifies, this would include actual or apprehended breaches of civil, criminal, regulatory or administrative law; miscarriages of justice; dangers to health & safety and the environment and the cover up of any such malpractice.

Working Time Regulations

The Rules came into force on 1st October 1998 and protect workers rather than just employees. The rules provide that a worker average time, including overtime, shall not exceed 48 hours for each seven day period -, it is for the employer to ensure that the limit is not exceeded. The normal time over which working time is to be averaged is a 17-week period; it can extend to a 52-week period if a collective workforce agreement so provides.

A worker may agree subject to right to terminate but only in writing that the 48-hour week does not apply. The agreement can be for a certain period or can be indefinite. The rules govern nighttime working. A night workers average normal hours of work shall not exceed 8 hours for each 24-hour period. The rules have introduced extra protection for nighttime workers, i.e. health assessments.

Annual Leave

Workers are entitled to 3 weeks paid leave, which rose to 4 weeks from 23 November 1999. Parties can agree when the leave year shall commence, otherwise it shall commence when the regulations come into force or on the commencement of employment if work begins after 1st October 1999. There are notice provisions for booking leave.

If a worker leaves without having taken their accrued entitlement they will be entitled to a payment in lieu based on how long they have worked within that leave year. The rules provide for rest breaks. Where the daily working time exceeds 6 hours workers are entitled to a rest break of at least 20 minutes (though parties are free to vary this by agreement).

The Tribunal will be able to award unlimited compensation where workers are subjected to any detriment for refusing to put up with a breach of the regulations. Dismissals of employees for such reasons will be automatically unfair. Duration of employment and age are not relevant in this context.

A worker could invoke a breach of the regulations in connection with a civil claim i.e. stress due to overwork.

There are criminal sanctions for certain specified breaches of the regulations.

There are certain workers who are exempt from the regulations and include certain police and military activities and doctors in training.

Employment Relations Act 1999

This is the latest in the programme of Employment Law Reform. It encompasses wide ranging reforms. The main elements of the Act are :

- ❖ Trade Union Recognition and de-recognition
- ❖ Industrial Action Ballards and Unfair Dismissal of strikers

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- ❖ Leave for family reasons (Maternity leave, Parental leave, time off for dependents - effective from 15 December.
- ❖ Individual rights (Employment Tribunals and Unfair Dismissal)

Significant provision include the following :

Fixed Term Contracts:

Ensuring that employees working under Fixed Term Contract cannot waive their right to claim Unfair Dismissal at the end of the term.

Part time workers:

Giving the Secretary of State powers to make regulations and issue codes of practice to eliminate discrimination against part time workers and facilitate the development of flexible working time arrangements and opportunities for part time work.

Employment Tribunals:

Simplifying the system of awards and payments made by Employment Tribunals or in redundancies etc. Increasing the limit on the compensatory award for unfair dismissal from £12,000 to £50,000 where the effective date of termination falls on or after 25th October and removing the limit in Health & Safety and Whistle Blowing cases.

Parental and Maternity Leave

New regulations and parental and maternity leave, a simplified framework of maternity rights and new rights to parental leave and to time off to deal with emergencies affecting dependents.

- ❖ All employees have the right to take time off to deal with emergencies involving dependants
- ❖ Parents of children born after 15 December can take 13 weeks unpaid parental leave before the child is five (leave can be taken up to the 18 birthday of a disabled child)
- ❖ For women whose expected week of confinement of childbirth falls on or after 30 April 2000
- ❖ Maternity leave is increased from 14 to 18 weeks
- ❖ The qualifying period for additional maternity leave is reduced from 2 years to 1
- ❖ Unfair dismissals waivers go
- ❖ New right for time off for domestic incidents

Human Rights Act

The Act received Royal Assent in November 1998, only some provisions are in force at present. The main provisions of the Act will be in force by 2nd October 2000. The Act requires the Courts interpret UK law in accordance with European Convention on Human Rights which was drawn up in 1950 and came into force in 1953. The Convention sets out in broad terms a number of fundamental rights and freedoms, including freedom of association, freedom to family life etc. Articles 10, 11 and 14, namely freedom of association including the right to join a Trade Union for the protection of one's interest, freedom to exercise your rights under the Convention without any discrimination on grounds of inter alia race or sex. Article 8 Freedom the right to private and family life and Articles 10 and 11 protect freedom of expression and assembly which has

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a knock on effect on the right of picketing. Proceedings under the Human Rights Act can only be brought by victims of a breach of Convention rights by a Public Authority. This mirrors the test for bringing proceedings against the UK at Strasbourg.

The Act provides for remedies including an award of damages analogues to principles supplied by the European Court of Human Rights in relation to compensation. Clearly the Act and its implementation is likely to have a considerable impact in many fields, not least of employment law.

Richard Wilson & Co
Solicitors

Cymbal House, High Street, Goring on Thames RG8 9AU

Tel: 01491 879100 Fax: 01491 874187 web: <http://www.richard-wilson.co.uk>

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July 2003