

Welcome !

To the first edition of our Employment Newsletter - an ongoing monthly service to clients, referrers and supporters of our firm. We hope this information is of interest and assistance to you and invite you to call our Employment experts with any queries you might have. Please note it is not formal legal advice and as such should not be acted on without seeking legal advice based on your particular set of circumstances.



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Age Discrimination

1st October 2006 saw the start date for new rules outlawing age discrimination in the workplace. The [Employment Equality \(Age\) Regulations 2006 SI 2006/1031](#) include a ban on age-faulted recruitment unless it is a real requirement for the job. Enforced retirement ages will still be lawful but must normally be 65 or more. Enforcing a retirement age will be automatically unfair dismissal if specified procedures are not followed. There will be no statutory limit on compensation which can be awarded for infringing the regulations. The current maximum and minimum age limits for claiming redundancy pay and the maximum age limit for claiming unfair dismissal have also been removed.

The regulations are much complex, especially the transitional provisions, and there will be uncertainty as to their precise meaning and effect at least until test cases, have been heard by the Tribunals. Employers should take great care and seek advice at an early stage if in any doubt as to the implications of the new rules for their workforce.

Minimum Wage

The annual increase in the national minimum wage came into effect on 1st October 2006. The basic rate rose from £5.05 to £5.35 per hour for those aged 22 and above. The rate for 18-21 year olds increased from £4.25 to £4.45 per hour and £3.00 to £3.30 per hour for under-18's.

Collective Redundancies

If 20 or more employees at one establishment are to be dismissed for redundancy within a 90 day period from 1st October 2006 (the [Collective Redundancies \(Amendment\) Regulations 2006](#)). The employer proposing collective redundancies must notify the Secretary of State, DTI, at least 30 days (90 days if 100+ employees are being made redundant) before giving notice to terminate an employee's contract of employment in respect of any of those dismissals. Failure to notify the DTI as required is a criminal offence.

TUPE (Transfer of Undertakings)

New TUPE rules came into force back in April 2006. While in general the new rules do no more than update the "old" 1981 rules, one important change has been to make it clear that employment of an "organised group" of professional services employees will be automatically transferred to a different firm/employer if the client they are servicing transfers its business. The rules are designed for the protection of employees so it is ironic that one of the first uses of this provision is by an advertising agency which is seeking to off-load its responsibilities to staff after a client (Boots Healthcare) transferred its account to a different agency. The McCann Erickson agency claims that employment of some of its high paid staff automatically transferred to a competitor, the Euro RSCG agency, when Euro RSCG won the Boot's account from them. If the case goes to trial it is likely to be of considerable interest as a first, somewhat bizarre, test of the consequences of the government's decision not to provide a "professional firm exemption" from the service transfer part of the new TUPE rules.

Holidays

Currently there is no legal right for most workers to have time off for bank or public holidays. Often these holidays are included in a works annual 20 day entitlement. A [DTI consultation document](#) proposes phasing in an increase in the basic annual paid holiday entitlement for full time workers from 20 days per year as at present to 28 days. In practice in most cases it is likely that bank and public holidays will account for the extra 8 days. The law which gives power to make the required regulations ([Work and Families Act 2006 s.13](#)) came into force on 1st October 2006 and it is likely that the phasing in will be spread over two or three years from October 2007.

Maternity

Various changes to the rules dealing with maternity, paternity and adoption leave and pay came into force on 1st October. In general these are for the benefit of those whose babies are due on or after 1st April 2007 (or where a placement for adoption is on or after that date). The main change is that the statutory maternity and adoption pay period is increased from 6 months to 9 months. Other changes include 52 weeks statutory maternity leave for all working mothers regardless of length of service and removal of the current rule under which a woman's maternity leave period automatically comes to an end when or if she does any paid work. Employees will be able to attend work for up to 10 days (for work, training or to maintain contact) without bringing maternity leave or SMP or to an end.

Fire Safety law

The Department for Communities and Local Government has issued [guidance](#) in anticipation of the [Regulatory Reform \(Fire Safety\) Order 2005](#) which came into effect on 1st October 2006. The old "fire certificate" arrangements come to an end and fire brigades will no longer as a routine matter advise on the fire precautions an employer should take. The responsibility for fire safety now lies with employers who will have a general duty to ensure, so far as is reasonably practicable, the safety of employees plus a general duty in relation to non-employees to take such fire precautions as may reasonably be required in the circumstances to ensure that the employers premises are safe. Employers must carry out a fire safety risk assessment and if they employ five or more employees they also have added record keeping responsibilities.

Implied terms

The High Court has ruled that an Employee's claim that a term should be implied into his employment contract to prevent his employer from making it difficult or impossible for him to become entitled to contractual benefits has a sufficient chance of success to allow it to go forward to a full trial. The court has explicitly recognised the possible existence of such implied terms employers who may be looking for ways to avoid keeping promises to staff, especially to senior staff, to whom they have subsequently come to regret having made such promises.

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