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Changes and Developments

Date of implementation	Development
6 April 2008	The Information and Consultation of Employees Regulations applies to businesses with 50+ employees.
6 April 2008	Statutory Maternity Pay increased to £117.18pw and Statutory Sick Pay increased to £75.40pw.
Summer 2008	There are plans to enact the Employment Bill, which if implemented would repeal the statutory dispute resolution procedures and replace these with a set of different measures aimed at early resolution of employment disputes.
1 October 2008	The adult rate is set to increase to £5.73. The rate for 18-21 year olds is also set to increase to £4.77. The 16-17 year old rate will increase to £3.53.
End of 2008	Plans to entitle employees time off work for training may be enacted.
1 April 2009	Statutory holiday entitlement rose to 4.8 weeks (24 days for full-time employees) on 1 October 2007. This entitlement is set to rise again to 5.6 weeks (28 days for full-time employees).
April 2009	Plans to extend flexible working to parents with children under 16 may be enacted.

Upcoming seminars >

Employment Law Update – Thursday 18th September

Discipline & Grievance – Thursday 16th October

Age Discrimination – Thursday 13th November

For more information on our seminar programme or to ensure that you are on our mailing list please contact Michelle McBride in our marketing department on 0191 204 4029 or email michelle.mcbride@wardhadaway.com.



Sex discrimination – where was the fanfare?

Usually, when a piece of significant legislation is changed, there is much comment and commentary from many corners. However, it would seem that some recent changes which came into effect on 6 April 2008 have been ushered in with little or no coverage at all. >

From that date, new rules amend provisions in the Sex Discrimination Act 1975 regarding harassment and discrimination on the grounds of pregnancy and maternity leave. What this does is remove the requirement for a comparator when a woman brings a claim of discrimination on the grounds of pregnancy or maternity leave. Previously, accordingly to the legislation, a woman would need to point to a male comparator in order to establish less favourable treatment. This change is now more in line with case law.

In addition to this, other changes in relation to unlawful sexual harassment include where:-

- there is unwanted conduct which relates to the sex of a person even if that conduct is not prompted by the complainant's sex.
- a complainant witnesses a person being subjected to conduct related to the sex of a person which has the purpose or effect of creating an intimidating environment for the witness.
- an employer knows that their employee is being repeatedly harassed by a third party, such as by a customer or client, on the grounds of sex and does nothing within their power to prevent further harassment.

Each of these makes quite significant inroads into the harassment legislation which is already broad. In particular, it is very difficult to reconcile the position of employers who have employees in customer-facing roles. How can employers monitor the behaviour of their customers, for example, and what about employees in the public sector whose employer has no control over its service users at all?

The best practice that can be advised is that employers make sure that they have clear procedures which employees can follow if they consider they have been subjected to harassment on the grounds of their sex and by a third party, or have witnessed any act of sexual harassment which causes them concern. Undoubtedly there will be complaint that these changes add yet another burden to already overburdened employers.

Theresa Carling-Wiggins, Solicitor
Tel: 0191 204 4455
Email: theresa.carling-wiggins@wardhadaway.com

www.wardhadaway.com

Sandgate House, 102 Quayside, Newcastle upon Tyne NE1 3DX. Tel: 0191 204 4000

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Scope of protection broadened for part time workers

With over 7.5 million part-time workers in Britain, the recent case of Sharma -v- Manchester City Council is of considerable importance to employers and employees alike. This makes it far easier for part-time workers to succeed in a claim that they have been less favourably treated than a comparable full timer under the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000. >

Previous case law held that a part timer could only succeed if part-time status was the sole cause of the disparate treatment. This produced potentially absurd results. For example, if an employer decided it would not permit part-time staff with red hair to apply for full-time posts, arguably the employer could escape liability as the part-time status was not the sole reason for the discrimination; the fact the worker had red hair was also a reason.

The Employment Appeal Tribunal in Sharma have now said that if a part-time worker can establish less favourable treatment compared with a comparable full-timer and that being part-time was one of the reasons for the treatment, then in the absence of justification, the worker has a sound claim.

Employers will therefore have to be alive to the treatment of part-time workers and in particular the reason for the treatment must not be related to their status, unless the treatment can be justified.

Tim Smith, Partner
Tel: 0191 204 4317
Email: tim.smith@wardhadaway.com

Employee deemed 'too young' wins age discrimination claim

An employee who was dismissed because she was too young for her job, which was communicated to her on dismissal, has recently won a claim for age discrimination in the Newcastle Employment Tribunal. >

In the case of Wilkinson v Springwell Engineering Limited, the Respondent employer argued that the real reason for the dismissal was for capability. In rejecting this argument, the Tribunal held that the employer's view of the employee's capability was based on stereotypical assumptions relating to her age.

This is one of the first claims for age discrimination where the Claimant is deemed 'too young' for the role, rather than 'too old'. The Claimant in this case, who was a teenager working for the company as an office administrator, was placed on a performance review when her employer became dissatisfied with her work. The tribunal, found, however that levels of inaccuracy were not significant when compared to both predecessors and successors in her role. There were a number of inconsistencies in the evidence presented by the respondent, including whether or not the employee was told she was dismissed due to her age. Therefore, the respondent could not prove that capability rather than age was the real reason for the dismissal.

Gillian Chinhengo, Solicitor
Tel: 0191 204 4297
Email: gillian.chinhengo@wardhadaway.com



Changes afoot...

The Government has announced its intention to extend the right to request flexible working (currently only available to parents with children under 6, or disabled children under 18, and carers) to parents with children under 16. >

It is also intended that agency workers will be given new rights. The CBI and TUC have reached an agreement which, once legislation is enacted, will entitle agency workers to "equal treatment", after they have been engaged for 12 weeks, in respect of employment conditions, although not occupational security schemes.

In addition, there are plans to enable employees to be allowed time off work to train.

Yvonne Atherton, Associate
Tel: 0191 204 4503
Email: yvonne.atherton@wardhadaway.com