



EMPLOYMENT LAW NEWSLETTER

01/08/2009



Redundancy pay limit to rise on 1st October 2009

As from the 1st October 2009 the weekly limit used to calculate statutory redundancy pay will rise from £350 to £380. It will remain at £380 until February 2011 with no increase in February 2010. The increase in weekly limit will also apply when calculating certain other types of payment, such as the basic award for unfair dismissal.

For more information on Employment Law please call 0800 612 6120



A request to work beyond retirement age

With the present economic downturn having a knock on effect on savings and pensions, a large percentage of the British workforce are delaying their plans to retire at 65 and are choosing to remain in work. Consequently the issue of age discrimination has never been so important. The Employment Equality (Age) Regulations 2006 makes it illegal to discriminate either directly or indirectly against employees because of their age. So what should you do? Between 6 and 12 months before the employee's 65th birthday you should give the employee written notice that their employment will come to an end and state the date it will end. At the same time you should tell the employee that they have the right to request to carry on working beyond their 65th birthday. If they would like to continue working beyond this date, the employee must write to you confirming this between 3 and 6 months before their 65th birthday. You should then invite the employee to attend a meeting to discuss their request unless of course you agree to their request in full. Remember the employee has a right to be accompanied to the meeting by either a colleague or trade union representative. Following this meeting, you should write to the employee with your decision. If the request is denied, the employee has the right to appeal against the decision. Remember the regulations protect all ages from discriminatory treatment. Get it wrong and it could be a costly affair as compensation is uncapped.

PP *An employer may be able to avoid a claim for direct or indirect age discrimination if they can show 'objective justification'. To complicate matters further the Employment Appeal Tribunal and the European Court of Justice take differing views on what constitutes 'objective justification'. If you are unsure on any aspect of age discrimination you need to seek advice from the IngramsProtect team.*



Gillian Markland,
Head of Employers



Swine Flu

With some 16.5 million working parents in the UK a swine flu pandemic could have a devastating effect on British businesses. It is estimated the pandemic could cost the economy £1.5 billion for each working day lost and some experts predict the full effects will not be felt until later this year. As an employer you owe your employees a duty of care in relation to health and safety at work. Perhaps you should consider a risk assessment? This may highlight some simple steps you could take for example providing tissues or hand wash. Other steps may also need to be taken to protect pregnant woman and workers with known underlying medical conditions. So how do you protect your business in such situations? Well now may be an ideal opportunity for you to make a business continuity plan. When drafting this, consider the key business functions and the minimum number of employees required to undertake these key functions. You may also want to consider interim home working, additional training on key functions and check emergency contact details are accurate and up to date. It is also an ideal time to review your sickness and annual leave policies and procedures.

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“Fit Notes” not “Sick notes”

Spring 2010 will see the death of the MED3 self certification form which will be replaced by a "fit note". Under the present MED3 a GP must certify either that 'an employee need not refrain from work' or that 'an employee need refrain from work for a specified period'. The new fit note gives the GP three categories to choose from: (1) fit for work; (2) not fit for work; or (3) may be fit for some work now. If the GP elects the final category he must go on to provide information about the type of work an employee will be able to carry out, taking into account their current illness / disability. The GP can also suggest adjustments to assist the employee to return to work sooner for example: a phased return; altered/reduced hours of work and adaptation of the workplace. The overall aim of the fit note is to get employees back to work sooner than they would normally return or if possible to enable them to remain in work.

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What is not clear is what happens if an employee and the GP disagree on what duties the employee can perform. Can an employer then insist on the employees return to work? If the employee refuses can an employer commence disciplinary/dismissal action? We do not know the answer at present and we shall have to await guidance from the Employment Tribunal before the position is clarified.



Can you claim back an overpayment of wages?

The recent case of Keenan v Barclays Bank plc involved Ms Keenan, a part-time advisor originally employed by Woolwich Building Society. After a few years into her employment the Woolwich was taken over by Barclays Bank. Ms Keenan was told she would be receiving a “significant pay rise” and consequently when she received her new contract stating she would be paid £17,000 pa (the significant pay rise) she did not challenge it. The contract contained a fundamental error; it should have stated she would be paid that amount on a pro rata basis for the hours she worked. The error went unnoticed for

There are limited circumstances in which an employer may be able to make a deduction lawfully otherwise the deduction is unlawful and the employee will be able to bring a claim for breach of contract. If you are in doubt seek advice from the IngramsProtect team.

three years resulting in a massive overpayment to Ms Keenan. The tribunal found Ms Keenan to be “an honest woman” and “unaware of her bosses mistake”. The tribunal ruled she was entitled to keep the overpayment of some £20,000 together with the salary of £17,000.



Lorna Pratt
Legal Executive

Would the outcome have been the same if the tribunal questioned the Claimants honesty; we do not know. Whilst this may be an exceptional case it does highlight how a simple typing error which goes unchecked can have disastrous consequences on your business.



Extended Parental Rights

The Government has placed on hold its plans to allow fathers up to six months paternity leave following the end of the mother’s first six months of maternity leave. The changes were due to come into force later this year but have been put on hold “indefinitely”.

For more
information on
Employment Law
please call
0800 612 6120

If you are affected by any of the above situations or if you would like to discuss any employment law problem affecting you or your business, please contact either Gillian Markland or Lorna Pratt on 01904 520600

Cash Flow the Lifblood of any Business

Ingrams Solicitors have a dedicated team of Commercial Debt Recovery Specialists committed to ensuring clients have the right approach to managing cash flow and recovering debt.

For immediate help call now on 01482 358850

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