



EMPLOYMENT LAW NEWSLETTER 01/10/2009



National Minimum Wage to increase

As from 1st October 2009, the National Minimum Wage Regulations 1999 (Amendment) Regulations 2009 raised the level of the national minimum wage from:

£5.73 to £5.80 per hour for workers aged 22 and over;

£4.77 to £4.83 per hour for workers aged 18 to 21 and ;

£3.53 to £3.57 per hour for workers aged 16 and 17

Employers should also note that there have been changes to the way that tips are paid in that they can no longer be used to top up wages to meet the national minimum wage.

For more information on Employment Law please call 0800 612 6120



Retirement update

Following our last newsletter in which we discussed an employee's right to request to work beyond retirement age, the case known as the Heyday case (a branch of Age Concern) has recently been heard by the High Court. This case was brought by a branch of Age Concern who asserted that the retirement age of 65 as permitted by the Employment Equality (Age Discrimination) Regulations 2006 is inconsistent with the Equal Treatment Framework Directive. Although Heyday sought to increase the default retirement age to 70, the High Court held that the age of 65 is lawful. They did however, question whether this would be the age if it was set today. With this in mind, the Government has said that it will review the retirement age again in 2010.

Don't worry, retiring someone at the age of 65 is still fair and lawful provided you follow the correct procedure.

*Gillian Markland,
Head of Employment*



Employer beware

The recent case of Gisda Cyf v Barratt has now established that when an employer dismisses an employee by letter, the dismissal date will not be the date that the letter was written, posted or delivered. It will instead be the date that the employee reads the said letter, i.e. when they have had a 'reasonable opportunity' to learn of their dismissal.

If an employee wishes to bring a claim against their employer in an employment tribunal, they must do so within 3 months of the date of dismissal or the act they are complaining about. The findings above therefore will be crucial to any employee or employer relying on the date of termination to support their case and for the tribunal to decide whether a claim has been lodged in time.

More and more employers are now opting to notify employees of the outcome of a disciplinary procedure by letter, and it is becoming increasingly common for employers to sack an employee by email. Where this occurs it will come down to a question of fact to establish the date on which the employee actually read the letter or email and therefore became aware of their dismissal. The judge hearing this case advised that it is the employer who ends the employment relationship and should therefore in such circumstances bear any risk.

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Reclaiming holiday whilst on sick

The recent case of Pereda v Madrid Movilidad held that employees who fall ill during their annual leave are entitled to reclaim their holidays to make up for the days they have been ill. The European Court of Justice where this case was heard, emphasised that the purpose of annual leave, i.e. relaxation and leisure, is different from the purpose of sick leave, i.e. to recover from being ill, therefore it was ruled that an employee who is off sick during a scheduled period of annual leave must be given the right to take annual leave at a later date, if they so request it.

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Transferable Maternity Leave

This highly publicised issue stems from the government's recent announcement that there is to be a consultation on allowing new mothers to transfer some of their maternity leave entitlement to the father, i.e. mothers who have any maternity leave outstanding in the second 6 months of their child's life will be able to transfer up to 6 months of the maternity leave to the father. Three months of that maternity leave will be paid at the same rate as Statutory Maternity Pay if such leave falls within the mother's 39 week maternity pay period.

PP *The consultation on implementing the above will begin shortly and it is intended to be made law by April 2010 with it becoming effective for parents of children due on or after 3rd April 2011 to allow time for employers to adjust.* **PP**

*Lorna Pratt,
Legal Executive*

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

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