



EMPLOYMENT LAW NEWSLETTER

01/02/2010



CHANGES AHEAD IN 2010

With 2009 being the most difficult of years for many businesses we look forward with renewed hope that 2010 will bring new opportunities and economic recovery. But what can employers expect in 2010?

For more
information on
Employment Law
please call
0800 612 6120

Early 2010 sees the introduction of the prohibition of blacklisting of workers from employment because of their union membership or activities.

February 2010 brings some good news with the decrease in the limits on the compensatory award for unfair dismissal from £66,200 to £65,300. However the new limits will only apply where the event which gives rise to the award or payment occurs on or after 1st February 2010. There is no change in the week's pay for calculating redundancy pay which remains at £380.

Statutory guaranteed payments fall from £21.50 to £21.20 per day.

April 2010 sees a number of significant changes namely:

- The extension of paternity leave and pay. Fathers will have the right to take up to 26 weeks off work during the mother's additional maternity leave period, as long as she has returned to work. Such leave will be available during the second 6 months of the child's life and may be paid if taken during the mother's statutory maternity pay period. The Government intends that the legislation is to come into force in April 2010, with effect for parents of babies due from 3rd April 2011.
- A right for employees to request time off to undertake training or study. For further details see IngramsProtect December 2009 newsletter.
- Introduction of "Fit Notes" not "Sick Notes". The format of the doctor's medical statement will allow them to record whether a patient is fit or not fit for work or "may be fit for some work now". 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.



Go to Jail, move directly to Jail

Another interesting case has recently been heard in Scotland. It involved Mr Robinson, the owner of a car hire firm, who dismissed his receptionist Susan Moffat without following any procedure. Not surprisingly he found himself in the Employment Tribunal. What he didn't bargain for was the fact he would be sentenced to 4 months in prison for perverting the course of justice. How did this happen? Faced with a claim in the Employment Tribunal Mr Robinson realized he had not issued Ms Moffat with a contract of employment nor had he issued her with any form of warning letter prior to her dismissal. So he faked the documents and forged her signature. Miss Moffat denied having had sight of these documents and it was clear from the evidence it was not her signature. The ET concluded they were forgeries, found in favour of Miss Moffat and awarded her £29,500. But it didn't end there. The Tribunal contacted the police who after investigation prosecuted Mr Robinson for "perverting the course of justice" hence the 4 month prison sentence.

“Under s. 1 of the Employment Rights Act 1996 every employee is entitled to receive a statement of particulars within two months of commencing employment. But how do you prove you have issued the contract? If you are unsure please speak to a member of the IngramsProtect team today”.

**Gillian Markland,
Head of
Employment**



The redundancy nightmare just got worse!

The recent case of Chagger v Abbey National Plc saw an employer ordered to pay an award of compensation of £2.8 million. Briefly, Mr Chagger was one of two trading risk controllers employed by Abbey. As a result of his poor relationship with his manager, his employer made him 'redundant' as a means of removing Mr Chagger from the business. Mr Chagger claimed unfair dismissal alleging the redundancy selection pool and criteria were a sham. He successfully argued that the real reason for his redundancy was on the grounds of his race; he being of Indian origin and the other employee in the pool being a white female.

Whilst the case dealt with a number of issues the main question was whether an employer responsible for an act of discrimination should be liable for the loss resulting from the "stigma" attached to an employee bringing a claim for discrimination. The Court of Appeal held that such loss should only be considered where the employee is able to produce compelling evidence of this. Mr Chagger was able to produce conclusive evidence of his failed attempts to find work in the financial sector and, as a result, he was forced to retrain as a maths teacher earning £80,000 less per annum. Prior to this case "stigma" damages could only be awarded where the stigma suffered was as a direct result of the unlawful act of the employer. This case has opened it up to include "the consequences of an employee bringing a claim".

This is a stark reminder to us all not to use a redundancy situation to oust an employee just because of our personal dislike for them. Employers need to ensure that there is a genuine redundancy situation and that a fair redundancy is followed. It is vital to have clear evidence to support each and every step taken in the redundancy process including reasons for redundancy, matrix and decisions made.

It is important that an employer can show a fair reason for dismissing an employee and that they followed a fair procedure. For clear, simple advice on the redundancy process contact a member of the IngramsProtect team.

**Lorna Pratt,
Legal Executive**



Watch this space!

In the recent case of Kucudkdeveci v Swedex GmbH & Co the ECJ held that a German law providing that employment before the age of 25 should be disregarded when calculating service-related notice period was in breach of the EU Equal Treatment Directive (2000/78). “So what does this have to do with me?” we hear you ask? This decision could mean that the way in which the basic awards for unfair dismissal and redundancy are calculated in the UK (based on age during each year of service) is also unlawfully age discriminatory. We shall have to see how this is dealt with in the UK and may mean a further change on the horizon.

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

**Expanding your business?
Buying new premises?
Entering into a new business lease?**

**Please contact Elaine Copley in our Property Department on:
01904 520600.**

Important Information

The information and opinions contained in this/these newsletter/s is provided for general information purposes only and are not intended to be construed or interpreted as legal or other professional advice.

Whilst IngramsProtect endeavours to ensure that the content of this/ these newsletter/s is accurate and up to date, certain inaccuracies or mistakes may arise from time to time. Although IngramsProtect will correct any inaccurate information as soon as it is brought to its attention, IngramsProtect will accept no responsibility for any loss or damage resulting from reliance on any of the information contained herein, furthermore no claim can be brought against IngramsProtect in respect of any such inaccurate information or mistakes.