

## Labour and Employment Client Service Group

To: Our Clients and Friends

6 April 2009

### New UK Employment Legislation – April 2009

Here is a summary of new employment-related legislation that will come into force in April 2009.

#### **Statutory disciplinary, dismissal and grievance procedures replaced by ACAS Code of Practice**

On 6 April 2009 the current statutory disciplinary, dismissal and grievance procedures, which came into force in October 2004, will be abolished and replaced by the ACAS Code of Practice (the "ACAS Code"). As was the case under the pre-6 April 2009 rules, it will be important to follow the new ACAS Code in order to avoid unfair dismissal claims, though a welcome change is that an employer's failure to follow the ACAS Code will not result in an automatically unfair dismissal. If an employee is successful in bringing a claim, any compensation that he or she is awarded may be increased by up to 25 per cent as a result of the employer's failure to follow the correct procedures. Likewise, a reduction may be imposed where the employee has failed to follow the ACAS Code.

The new ACAS Code will only apply to "disciplinary situations" and only certain dismissal situations (amongst other things, it will exclude dismissals on the grounds of redundancy or non-renewal of a fixed-term contract). Whilst much of the ACAS Code simply reflects established law and practice relating to disciplinary and grievance situations, there is uncertainty relating to a number of provisions in the ACAS Code, including the right of employees to call "relevant witnesses" at disciplinary hearings and the right of appeal against warnings, as well as an emphasis on resolving grievances informally. Employers should audit their procedures to ensure compliance and should consider consulting with employees or their representatives about changes to disciplinary or grievance procedures. Note that the ACAS Code will only apply to 'employees' and not 'workers'.

*Employers should review their current disciplinary, dismissal and grievance procedures to ensure compliance with the ACAS Code.*

*Employers must comply with the new procedures from 6 April 2009, but note that the old procedures will continue to apply to "trigger events" that commenced before 6 April 2009.*

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## **Changes to Employment Tribunal procedure and powers**

The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2008 and the Employment Tribunals Act 1996 (Tribunal Composition) Order 2009 both come into force on 6 April 2009.

The Regulations amend the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 and deal with various topics including applications for extending time limits for responses, default judgments, withdrawal of proceedings, interim relief, withdrawal of proceedings and dismissal of claims settled by ACAS.

The Order adds 'disputes over holiday pay' to the list of matters that employment judges can hear alone.

## **Increase to statutory minimum holiday entitlement**

The statutory minimum requirement for paid holiday for workers in Great Britain will increase from 24 to 28 days on 1 April 2009 under the Working Time (Amendment) Regulations 2007. Please note that the 28 day minimum holiday entitlement afforded to workers may be inclusive of public and Bank holidays, as there is no statutory right to time off on any public or Bank holiday.

*Employers should ensure that their workers are receiving the new statutory minimum holiday requirement and inform employees in writing if any changes are required.*

## **Extension to flexible working rights**

The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2009 will come into force from 6 April 2009. This statutory instrument provides an extension to the right to request flexible working to parents of children up to the age of 16 (or 17 where the child is disabled). The right to request a contract variation previously only applied to carers of children under 6 or disabled children under 18, as well as employees who care for certain adults.

*For employers this is a significant addition to parental rights. Although employers are not obliged to agree to a flexible working request, they must follow the proper procedures to give such a request careful consideration.*

## **Increase in statutory sick pay**

From 6 April 2009 the weekly statutory rate of pay for sick absence will increase to £79.15 (from £75.40).

*Employers should ensure their payroll practices reflect these changes.*

## **Increases in statutory maternity pay, statutory paternity pay and statutory adoption pay**

The amount of statutory maternity, paternity and adoption pay for employees will increase to £123.06 a week (or the earnings-related rate (90 per cent of the employee's average weekly earnings) whichever is the lower) for payment weeks starting on or after Sunday 5 April 2009.

*Employers should ensure their payroll reflects these changes.*

## **Conduct of employment agencies and employment businesses**

Certain employment agency provisions within the Employment Act 2008 will come into force on 6 April 2009. These will make various offences under the Employment Agencies Act 1973 (such as requesting

or receiving a fee for providing work-finding services - except in those sectors such as entertaining and modelling where agencies are entitled to charge for these services in certain circumstances) triable either on indictment in the Crown Court or summarily by the Magistrates' Court. The provisions will also strengthen the powers of Employment Agency Standards inspectors, for example by enabling inspectors to require a person carrying on an agency to provide records, documents and information at such time and place as the inspector may specify.

*Employment agencies and employers who contract with employment agencies for the provision of staff need to be aware of these changes.*

**Looking ahead, the following legislation is likely to be introduced in October 2009:**

- A single Equality Bill to harmonise the different strands of discrimination law is proposed for the 2008/2009 parliamentary session, and is scheduled to be published in April 2009; however, this bill may not be debated until the 2009/2010 session.
- The Equality and Diversity (Reform) Bill - a private member's bill to prohibit the use of affirmative and positive action in recruitment and appointment processes and to repeal the Sex Discrimination (Election Candidates) Act 2002 - will have its second reading in parliament on 16 October 2009.
- Under the Safeguarding Vulnerable Groups Act, a centralised vetting system for people working with children and vulnerable adults will come into force in October 2009.
- There will be an increase in National Minimum Wage rates on 1 October 2009. Figures have not yet been published.

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