

## Employment Law

# What's on the agenda for 2010?

January 2010

### What to look out for in 2010

Although political commentators will tell you that the impending general election is likely to bring a new government, one thing you can be certain of is that there will continue to be employment law changes in 2010. Beneath the political posturing, there is a degree of consensus on a wide range of employment law issues, particularly as in many areas the agenda is set by the European Union.

Below is a list of changes which are expected, regardless of who becomes the next Prime Minister.

#### 1. A revised ACAS Code of Practice on Time Off for Trade Union Duties and Activities

This came into force on 1<sup>st</sup> January 2010, updating and replacing the previous code, to ensure that the code reflects modern practices.

The Code is admissible as evidence in determining any issues in Employment Tribunal proceedings. However, you cannot bring a claim for breach of the Code itself.

#### 2. New Regulations prohibiting blacklisting of workers

The Employment Relations Act 1999 (Blacklists) Regulations 2010 are due to come into force between February and April 2010.

The new law will make it illegal, subject to limited exceptions, to 'compile, use, sell or supply' lists of trade union members or activists, which might be used by employers or employment agencies for the

purposes of discrimination, either in terms of recruitment or during periods or work.

Individuals who suffer loss as a result of such unlawful activities will be entitled to bring a claim in either the Employment Tribunal or the County Court.

#### 3. Employment Tribunals to be able to pass on whistleblower allegations

The government has published this month its draft version of the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2010, which enable Employment Tribunals to pass on 'whistleblowing' allegations to any one of over 50 listed regulatory authorities.

This will apply to claims, or amended claims, arising on or after 6 April 2010. However, it will only happen at the discretion of the Tribunal, and only if the claimant indicates on the claim form (ET1) that the claim includes a 'protected disclosure' and that they wish for the allegation to be referred to the relevant authorities.

It will remain to be seen whether claimants use the threat of authorising a referral as a bargaining tool to obtain a higher settlement. If this does occur, the number of referrals may be small, and the aim of the reform may be largely defeated.

#### 4. The Normal Minimum Pension Age will increase from 50 to 55

The Normal Minimum Pension Age is the earliest age

at which a member of a UK registered pension scheme can ordinarily draw their pension. On 6 April 2010, it will rise from 50 to 55.

There are two exceptions: 'ill-health' pensions and, subject to certain conditions, pensions which gave a right, or a prospective right, to members to take their pension between 50 and 55 on or before 5<sup>th</sup> April 2006.

## **5. Consultation on default retirement age to be completed**

The default retirement age is currently 65, but this has come under legal attack (albeit thus far unsuccessfully), and the government seems increasingly minded to abolish or raise it.

Therefore, a consultation period was commenced to ascertain views from across the board and the deadline for submissions is 1<sup>st</sup> February 2010. Realistically, any change in the law is likely to be implemented in 2011 at the earliest, and it seems that a new government is unlikely to embark on a radical change of course.

## **6. Immigration rules for those coming to employment in the UK to be tightened**

Employers that may want to employ immigrants need to be aware that the rules are being tightened up. Workers will now need to be earning a salary of at least £20,000 to qualify as 'skilled' (previously £17,000), and overseas workers that want to transfer to a UK branch of their company will need to have worked for the overseas subsidiary for one year (previously 6 months).

The changes are possible as a result of powers given to the Home Secretary to vary the 'points-based system', which now operates for potential immigrants. Indeed, this agenda of helping out British workers at a time of relatively high unemployment is one which may become more prominent as we approach election time.

The changes will take effect from 1<sup>st</sup> April 2010.

## **7. Right to request time off for training**

Following the passing into law of the Apprenticeships, Skills, Children and Learning Act on 13<sup>th</sup> November 2009, a new right for employees to

request time off for training will exist from April 2010. However, the new right will only initially apply to those employed by organisations of 250 or more employees. Other employees will have to wait until April 2011.

Requests will need to specify how the training will enhance the effectiveness of the employee in the business and how it will improve the performance of the business. It is, in many ways, similar to the right to request flexible working. For example, the request must be made in writing and employers must give valid reasons for turning it down. There are ten acceptable reasons for refusing a request, including unavailability of appropriate training, lack of relevance to the employee's job, unacceptable costs burdens or impact on quality of work or on the ability to satisfy customer demand. Employees will also have the right to appeal any adverse decision.

## **8. 'Fit Notes' to replace sick notes**

In April 2010 the Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) Amendment Regulations 2010 come into force. This will replace the present 'sick note' with a new 'fit note'.

This is not just an exercise in positive thinking. The new system will allow doctors the option of indicating that someone 'may be fit for some work now', rather than just saying they are still not ready to resume work fully.

## **9. Equality Bill expected to get Royal Assent**

The long-awaited Equality Act is likely to become a reality this year, and is expected to come into force in October 2010. The government showed a determination to get it through its Report Stage and Third Reading in the House of Commons on 2<sup>nd</sup> December 2009 (passed by 338 votes to 8), making it likely that the bill will become law before the general election.

The Bill is designed to bring together various legislation on discrimination in one Act and to extend it where appropriate. Most of the Bill has remained intact, and the details have been covered in the April, May and July editions of our Employment Updates.

Significant amendments made to the original bill as it progressed through the House of Commons include:

- enabling direct discrimination claims to be brought in relation to a combination of any two of the following protected characteristics: age, disability, gender reassignment, race, religion or belief, sex and sexual orientation; and
- a new clause restricting the ability of employers to use questionnaires during recruitment to ask about disability issues.

The requirement within the Bill requiring private sector employers with more than 250 employees to publish pay differentials between men and women, will now not be enforced by the government, at least until 2013, and then only if there is insufficient voluntary compliance.

The Bill is now progressing through the Committee Stage of the House of Lords.

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