



By Joanne May

EMPLOYMENT LAW UPDATE AUTUMN 2009

Practical information on employment issues for employers

The content of this document is for general information only and the Firm takes no responsibility for specific situations where specialist advice should be sought.

What's new in October 2009?

1. National Minimum Wage

The hourly rates increased on 1 October to:

- 22 and Over £5.80
- 18 – 21 £4.83
- 16 – 17 £3.57

2. Redundancy Pay

Also from 1 October the statutory maximum amount of a weeks pay has increased to £380. This is used to calculate statutory redundancy payments and the basic award in unfair dismissal claims.

3. Tips, Services Charges and the National Minimum Wage

1 October sees a change that means that the use of tips, service charges and gratuities can no longer be used to make up the minimum wage.

You may need to reconsider how you currently administer payroll and taxes. The Department for Business Innovation and Skills has published a Code of Best Practice on tipping and service charges which can be viewed here

<http://www.berr.gov.uk/files/file52948.pdf>

4. Safeguarding Vulnerable Groups

12 October is the launch date for the vetting and barring scheme for checking the suitability of potential employees to work with children and vulnerable adults. The existing lists of barred

individuals – such as the list established under the Protection of Children Act 1999 – will be replaced by 2 new 'Barred Lists'.

You will be able to make checks online with information updated straight away when and individual is added to the list. Employers will be informed where possible if an individual becomes barred.

Importantly, there will be fines of up to £5,000 for employers who knowingly employ individuals on the List or fail to make the relevant checks.

More information can be viewed here http://www.crb.gov.uk/faqs/vetting_and_barring_scheme.aspx

Default Retirement Age remains at 65 – for now

Heyday's challenge to the National Retirement Age of 65 has been dismissed by the High Court. This means that currently you can insist an employee retires at 65 provided that you have given them written notice of their retirement date at least 6 months prior to this. Also you have to inform them of their right to object and request to work on beyond this date.

The Judge however made it clear that this situation could not continue and the Government has brought forward a review to 2010. It is likely that the national retirement age will increase to 70 or disappear altogether – so watch this space!

For the time being though this decision means that any Tribunal claims against employers who have relied on the National Retirement Age exemption will be dismissed.

Statutory Holiday Entitlement and Sickness

A recent European decision provides that if you have an employee who has holiday booked and then is sick during that period they are entitled to take that time off as sickness absence not holiday. This means that they can take that holiday at another time in addition to the sick leave.

For those employers in the private sector though an employee is not entitled to carry that holiday leave into the next holiday year if they are off on long term sick leave. It is likely though that the Government will change the law since this position is inconsistent with EU legislation – again watch this space.

Are you prepared for a Swine Flu pandemic?

Have you thought about how you will keep your business running if there is a swine flu pandemic this Autumn?

Here are some key points for you to consider:-

- **Duty of Care**
You have a duty of care to your employees and you should take steps that are necessary to ensure their safety. So you need to consider hygiene precautions such as hand washes, posters and risk assessments for vulnerable employees such as those who are pregnant, disabled or who have existing medical conditions.
- **Consult with your Employees now**
Talk to your employees – through your Employee Representative Committee if you have one. Reassure them that they will be treated fairly within your normal procedures in the event that they are ill. Make it clear that they need to inform you if they are unwell and should not return to work before they are no longer infectious and feel well enough to do so. Also reassure them over time off if their families are unwell – it is likely that they will have a statutory right to time off in these situations in any event.

- **Have a Contingency Plan**

Consider alternative work patterns and locations to keep a maximum number of staff at work. Review your IT to see if you can accommodate homeworking, teleconferencing etc. Undertake an audit of transferable skills to see if fit staff can cover for those off sick.

- **Absence Management and Return to Work**

If your employees do require time off then agree with them how you will record the absence and whether or not they will be paid. If you currently pay your employees more than Statutory Sick Pay when they are ill you may need to review this (in consultation with your staff) to cover the situation if you do have mass levels of sickness absence which make this unsustainable for your business. If you are considering this tough take legal advice before implementing any changes

Remember – it is important to create a culture where your employees are able to inform you that they are unwell and they feel able to take the necessary time off to recover. For more information see the Acas website at

<http://www.acas.org.uk/index.aspx?articleid=2644>

Please call or e-mail our employment Solicitor, Joanne May to discuss any of the above issues or for assistance on any other employment matter that you may have. Whether it is drafting contracts of employment, policies or procedures or defending Employment Tribunal Claims we will be happy to help.

If you would like advice regarding family matters please contact my colleague Sarah Smith sarah.smith@smslaw.co.uk

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