



# Employment Law Newsletter

SPRING 2010  
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*"... a worker on sick leave continues to accrue paid holiday entitlement."*

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## 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 April 2010?

### Additional Paternity Leave Regulations

The Additional Paternity Leave Regulations 2010 which give fathers and partners (including same-sex and civil partners) up to six months' additional paternity leave came into force on 6 April 2010. The Regulations will only apply to parents of children due (and adoptive parents notified of a match) on or after 3 April 2011.

The additional paternity leave is only due provided the mother has returned to work without exercising her full entitlement to her maternity leave. So in effect the leave will be transferrable from the mother as will some of her maternity pay provided the paternity leave is taken during the mother's maternity pay period. The pay will be at the same rate and paid in the same way as Statutory Maternity Pay. The Regulations are currently still in draft form.

### New 'Fit' Notes

We now have links with Daryon Eldridge at Eldridge People Solutions who provides training and human resources support for businesses. Daryon writes that from 6 April 2010 the new "fit note" will replace the current sick note provided by GP's. Under new government regulations, GP's will be required to state whether someone is fit for some work or unable to work at all.

If the GP decides the person is fit for some work the form provides tick boxes for either a phased return to work, altered hours, amended duties or workplace adaptations. There is a large space for GP's comments, including a more detailed explanation of the effect of the patient's condition and their ability to perform certain functions.

This new note will provide evidence about an employee's condition and what he/she can do and it has been brought in to encourage a speedier return to work and for employers to understand what if any work could be carried out rather than the employee just being signed off sick.

It has been described by the DWP as "a win win" situation for employees and employers as it will be especially beneficial in potential long term absence cases.

If you would like more information please click on the attached helpful information from business link.

<http://online.businesslink.gov.uk/bdotg/action/ruDetail?r.s=sl&r.lc=en&type=REGUPDATE&itemId=1084554258>

Now all we have to do is go on a training course on how to read doctors hand writing!

Please see Daryon's website for further information on the services that she can provide [www.eldridgepeoplesolutions.co.uk](http://www.eldridgepeoplesolutions.co.uk)

### The Equality Act 2010

The Equality Bill 2010 has now been approved by the House of Commons and will become law later this week.

The majority of its provisions will actually come in to force in October 2010 and extend discrimination legislation to provide more comprehensive protection for those working in schools, the public sector and outside the workplace in public services.

Key issues for employers will be:-

- An employer will be prohibited from asking job applicants questions about their health and whether they have a disability. There will be specified circumstances when these questions can be asked before a job offer is made, such as situations when it is necessary to assess whether an applicant will be able to perform duties that are intrinsic to the job. Otherwise employers will have to screen applicants about their health after the job offer has been made.
- The ban on associative discrimination is extended to protect spouses, partners, parents and carers who look after a disabled or older relative. So although the current case law provides a certain amount of protection for employees the new law clarifies this. If for example a mother is absent from work due to issues with her disabled child for an employer to then treat her less favourably or to fail to make reasonable adjustments to enable her to care for that child could be discriminatory.
- The ban on discrimination by perception is also extended by the Act. So if an employer refuses to employ a man because they believe it is a woman due to the nature of their name then that person will be able to claim sex discrimination.
- Although the Conservatives have stated that should they win the general election they will probably not implement this provision, as it stands employers will be able to choose a candidate from

an under represented group for a job when they have a choice between 2 or more candidates who are equally qualified.

- If action is taken against employees who discuss their rates of pay with other colleagues or former colleagues then this will be unlawful victimisation.

### Finally.....accrual of holiday whilst on sick leave

The European Court of Justice has recently held that a worker on sick leave continues to accrue paid holiday entitlement. So you must allow a worker to take paid holiday leave during a period of sick leave. If the worker does not take the holiday leave whilst off sick you must allow them to take their holiday leave upon their return, even if this means carrying it over to the next holiday year.

If the worker's employment is terminated whilst on sick leave or upon return to work he is entitled to be paid in lieu of all accrued but untaken holiday leave even if this has accrued during the sickness absence.

Employers should check their contracts of employment to ensure that they state that employees on long term sick leave should take their holiday entitlement in that holiday year. Holiday should still be booked using the normal company procedures.

**Please call or e-mail our employment solicitor, Joanne May [joanne.may@smslaw.co.uk](mailto:joanne.may@smslaw.co.uk) 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 Sarah Smith [sarah.smith@smslaw.co.uk](mailto:sarah.smith@smslaw.co.uk)**