

UK Employment Law: The Hot Topics

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At a Glance

This Stay Current flags the latest employment law and employment related developments affecting UK Employers. Undoubtedly, the issue of retirement and age discrimination is shaping up to be this year's hot topic but others are not far behind.

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1. Employers have until 5 April 2011 to retire employees automatically at age 65

The UK's decision to abolish the default retirement age of 65 is causing much controversy and only last week a second version of the draft regulations were published. Employers have until 5 April 2011 to retire employees automatically at age 65. As of 6 April 2011, the transitional provisions will apply and any retirement dismissal will constitute age discrimination and be unfair. The new retirement rules mean that UK employers will need to be ready to justify retirement and follow a fair procedure if they wish to avoid age discrimination and unfair dismissal claims. The change will also impact offer letters and contracts of employment, benefit schemes, policies and procedures.

2. Time-off for training will not apply to employers with less than 250 employees

As of 6 April 2010, employees of larger organisations with 250 or more employees have the right to request time off for study or training. This right was due to be extended to all employers as of 6 April 2011. However, the UK Government has announced that the right will not be extended at this time.

3. *Additional paternity and adoption leave and pay 'kicks-in' on 3 April 2011*

Although the new regulations in respect of additional paternity and adoption leave and pay came into force back in April 2010, UK employers will only now start to feel the effects as the right applies to parents of a baby due on or after 3 April 2011 and to adoptive parents who are matched with a child on or after that date. Eligible fathers and adopters will be entitled to up to a maximum of 26 weeks additional paternity or adoption leave in the period beginning 20 weeks after the child's birth or placement. The entitlement to additional statutory paternity or adoption pay will equate to the number of weeks of unexpired statutory maternity or adoption pay or maternity allowance that remains when the mother returns to work.

4. *Employees of a business in administration will always transfer under TUPE*

A decision of the UK's Employment Appeal Tribunal last week has clarified that the employees of a business in administration will always transfer automatically under TUPE to the buyer even if it is a 'pre-pack' sale as 'administration' is a 'relevant insolvency procedure', meaning insolvency proceedings which have been opened not with a view to the liquidation of assets. Although a Court of Appeal decision is still required, the confusion arising from *Oaklands v Wellswood* has now been for the most part resolved.

5. *ECJ rules insurance sector gender exclusion unlawful*

A ruling of the European Court of Justice last week means that as of 21 December 2012 the insurance sector will no longer be able to use gender specific actuarial factors in calculating benefits. This decision has wide reaching implications for the provision of goods and services by the insurance sector across the EU.

6. *Minor errors in industrial action formalities less likely now to stop UK strikes*

There were a series of high profile strikes last year and this pattern of industrial unrest looks set to continue. In a number of cases, employers were able to obtain interim injunctions from the High Court to prevent industrial action taking place on the grounds of minor errors in the balloting and notification requirements. However, the UK's Court of Appeal judgment last week reviewed the formalities and it discharged two of these injunctions. It held that accidental failures and trifling errors should not invalidate action. Therefore, employers may find it more difficult to obtain interim injunctions in future.

7. *U-turn on bank bonus issue*

The UK's Court of Appeal has yesterday handed down its judgment in the latest instalment of the contractual bonus claims brought by former employees of Dresdner Kleinworth Limited/Commerzbank AG. The Court of Appeal held that the High Court judge was wrong to dismiss part of the former employee's claims based on a so called "Town Hall" meeting and announcement on the bank's intranet. Employers need to once again be more wary about informal announcements in respect of bonuses.

8. *More enforcement of UK data protection laws*

Whilst the UK's Information Commissioner this week warns that UK organizations operating websites must "wake-up" to the revisions to the e-privacy Directive on cookies which come into force across the EU on 25 May 2011, he continues to take enforcement action. At the end of last month Cambridgeshire County Council had to sign an undertaking after the loss of an unauthorized memory stick by an employee which contained sensitive data. In addition, the UK's Information Commissioner Office (the "ICO") has also been making further use of its new power to fine organisations that breach the UK's data protection laws. After two fines at the end of last year, the ICO has now imposed fines of £80,000 and £70,000 on two councils arising out of the theft of laptops containing unencrypted sensitive personal data.



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