

StayCurrent

A Client Alert from Paul Hastings

Latest UK Employment Law Developments for 2006

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New Statutory Compensation Limits

The following new statutory limits on Employment Tribunal awards apply to claims where the “*effective date of termination*” is on or after **1 February 2006**:

- the maximum compensatory award for loss of past and future net earnings, benefits and pension rights in most unfair dismissal claims has increased from £56,800 to **£58,400**; and
- the maximum gross weekly pay used in the calculation of the statutory redundancy payment and both basic and additional awards in unfair dismissal claims has increased from £280 to **£290**.

New Benefits Rates

The new rates of statutory benefits to apply from **2 April 2006** are:

- the standard rate of statutory maternity/paternity/adoption pay will increase to **£108.85** per week;
- the standard rate of Statutory Sick Pay will increase to **£70.05** per week; and
- the earnings threshold for these payments will increase from £82 to **£84** per week.

New TUPE Regulations

On **15 February 2006**, the DTI published the new **Transfer of Undertakings (Protection of Employment) Regulations 2006**. Subject to Parliamentary approval, they come into force on **6 April 2006**. The DTI has also issued guidance for employers on the main changes, which include:

- a widening of the scope of the 1981 TUPE Regulations to make it clear that outsourcing and in-sourcing (defined as “*service provision changes*”) will be covered by TUPE except

where the service provision is i) a “one-off” service provision “of short-term duration” or ii) for the provision of goods

- a new duty on the transferor to provide to the transferee “*employee liability information*” at least two weeks before the completion of the transfer, including the identity and age of all transferring employees, their statutory statements of particulars of employment and details of any disciplinary action, grievances or actual or potential legal action brought by the employees in the previous two years

If the transferor fails to provide this information, an Employment Tribunal can award compensation for any loss suffered by the transferee (with a minimum award of £500 per employee unless it is unjust to award the minimum)

- greater flexibility in certain cases where the transferor is insolvent
- the ability of employers and employees to agree variations to contracts of employment where the reason for the variation is an “*economic, technical or organisational reason*”
- details of the circumstances under which it is unfair for employers to dismiss employees for reasons connected with a transfer.

Requirements to Consult On Pension Changes

The **Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006** due to come into force on **6 April 2006** will require employers to inform and consult employees or their representatives before making specified changes to certain occupational and personal pension schemes including: increases to the normal pension age, increasing member contributions, preventing members’ future accrual of benefits under the scheme and closing the scheme to new members.

The Regulations will initially apply only to employers with more than 150 employees in Great Britain, although this

minimum will be reduced to 100 employees in April 2007 and to 50 employees in April 2008.

Information and consultation must commence not less than 60 days before any changes are intended to take effect. The Regulations set out a default mechanism for information and consultation. However, if information and consultation arrangements have already been agreed to by a recognised trade union or under the Information and Consultation of Employees Regulations 2004, those arrangements must be used in relation to the employees covered by them.

The **Information and Consultation of Employees (Amendment) Regulations 2006** are also due to come into force on **6 April 2006**. These Regulations will ensure that employers who give written notice to employees or their representatives that they will be complying with the obligations to inform and consult under the new Occupational and Personal Pension Schemes Regulations 2006 will not, in addition, be required to consult under the Information and Consultation of Employees Regulations 2004.

Changes to Working Time Regulations

Regulations have been approved by Parliament that will remove the *'partly unmeasured working time'* exemption from the **Working Time Regulations 1998**.

The exemption currently applies to workers who have an element of their working time pre-determined – usually by their contract of employment – but who voluntarily work longer hours. These additional voluntary hours are disregarded for the purpose of some of the protections offered by the Working Time Regulations. The effect is that restrictions on the 48 hour week and night working do not apply in respect of these additional voluntary hours. It had been suggested that the UK Government had not implemented workers' rights to daily and weekly rest breaks adequately, and that the exemption went further than the limited derogation allowed by the Working Time Directive.

With effect from **6 April 2006**, the **Working Time (Amendment) Regulations 2006** revoke Regulation 20(2), thereby removing the exemption. For the purposes of the 48 hour week and night work provisions, it will no longer be possible to disregard any voluntary time worked in excess of the core hours. All time worked will need to be taken into account.

The exemption in relation to entirely unmeasured time worked by senior executives and managers will remain intact.

New CRE CODE of Practice On Racial Equality in Employment

In November 2005, the CRE launched the new statutory **Code of Practice on Racial Equality in Employment** to replace the original 1984 Code. The new Code, which will come into force on **6 April 2006**, incorporates recent legislative amendments and the considerable body of case law under the Race Relations Act 1976.

The Code aims to help employers avoid litigation and promote equality. It will be admissible in Employment Tribunal proceedings.

New Family Leave Regulations

The DTI has published for consultation three sets of draft Regulations that will bring in some of the reforms to the rules on family-related leave and flexible working announced in the Government's response to the Work and Families Consultation. The Regulations are due to take effect in April 2007. However, the closing date for first round consultation is **18 April 2006**.

- **The Maternity and Parental Leave (Amendment) Regulations 2006:** these will introduce, among other things, 'Keeping in Touch Days', to enable mothers to work for a limited number of days during their statutory maternity pay period without losing the entitlement to statutory pay or to end their leave. The limit on the number of such days available to mothers is a question put out to consultation.
- **The Paternity and Adoption Leave (Amendment) Regulations 2006** will mirror the changes made to the maternity leave Regulations in the case of adoption leave.
- **The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2006** will extend the entitlement to request flexible working arrangements to carers. A 'carer' is defined as someone who cares for an adult who is either his or her spouse or civil partner, a relative, or a person living at the same address. The definition of 'relative' in this context is opened up for consultation.

Other family-friendly proposals announced in the Government's response to the Work and Families Consultation include the proposed extension of statutory paid maternity leave from six to nine months, and the introduction of a new right for mothers to transfer a proportion of their maternity leave and pay to fathers. These are to be introduced as part of the Work and Families Bill and also under secondary legislation due to be published in draft in the next few weeks.

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