

EMPLOYMENT LAW

2011 will be a year of change in employment law. **Catriona Watt**, a solicitor at law firm Fox, outlines the key developments and their implications for employers and employees

The law reforms on employment issues over this year will challenge ingrained assumptions about the way we work. Below are our top seven key developments to look out for in 2011.

Abolition of the default retirement age

Currently, the law allows employers to lawfully force employees aged 65 to retire because they have reached the statutory default retirement age (DRA). The government plans to phase out the DRA from 6 April 2011, with the DRA being abolished from 1 October 2011. Employers may decide to keep or abandon fixed retirement ages for employees. Either way, if any employee is forced to retire, the company must be prepared to defend its decision before an employment tribunal. If the reason for retirement is age, the company will only have a defence against an age discrimination claim if it can justify forcing the employee to retire on the basis that this was a proportionate means of achieving a legitimate aim of the business. Employers will be more likely to be able to justify a DRA for particular types of employees, eg police and construction workers.

The abolition of the DRA is likely to result in a substantial cultural shift in the workplace. Employers will no longer be able to rely on retirement as a fair reason for dismissal. Many employers are now carefully reviewing their retirement policies and considering whether they can be objectively justified. More employers will be relying on performance management as an alternative basis for 'managing out' employees. Effective performance

management systems, including regular appraisals and clearly defined roles and objectives, will be more important than ever. These systems can safely be used by an employer to fairly dismiss an individual over retirement age by reason of poor health or performance – provided that the procedures apply equally to employees of all ages.

For employees who reach the age of 65 before 1 October 2011, the existing retirement arrangements will apply. However, action should be taken by employers now, because the relevant notices under the old procedures need to be issued before 6 April 2011.

Positive action and the single equality duty

From 6 April 2011, section 159 of the Equality Act 2010 will allow employers, in defined circumstances, to recruit or promote a person with one 'protected characteristic' in preference to another person who does not have the protected characteristic, provided that they are equally qualified for the post.

The act lists nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The government's objective is to enable and encourage employees to overcome or minimise a disadvantage or participate in an activity where he or she is under-represented in that activity.

The single equality duty requires public bodies (eg public authorities) to eliminate all types of discrimination, advance equality of opportunity and foster good relations between different

groups. The specific duties are aimed at helping public bodies to meet their obligations under the general equality duty, and to make them more accountable to the public.

Additional paternity leave

New regulations give eligible employees (usually fathers) the right to take up to 26 weeks additional paternity leave if the mother (or primary adopter) returns to work before using her full entitlement to statutory maternity leave. This applies to parents of babies born (and adoptive parents notified of a match) on or after 3 April 2011.

Employers are now updating their existing procedures to include the new rights. Planning for this involves considering the impact on the employer's business and developing contingency plans for how work will be covered during extended paternity leave.

Right to request flexible working

The government plans to extend the right to request flexible working to parents with children under 18 (one year older than at present) from April 2011. To be eligible to request flexible working, employees must be employed by the same business for 26 weeks or more. It is estimated that the new right will benefit 300,000 people.

Agency worker regulations

New regulations will come into force on 1 October 2011. They give agency workers the right to the same basic working conditions (including pay) as permanent staff employed by the hirer, once the agency worker has worked

*COMING SOON...

Other employment law issues to watch out for during 2011 include:

- * extension of the right to request flexible working to all employees, whether they care for someone or not
- * extension of the unfair dismissal qualifying period from one to two years' service
- * reform of the employment tribunal process, including the introduction of fees for filing claims
- * caste being added to the list of 'protected characteristics' under the Equality Act 2010.

for 12 weeks on the same assignment. Agency workers will also have some rights from the first day of their assignment, including equal access to onsite facilities provided by the hirer, such as a staff canteen or crèche.

This is likely to be particularly difficult for employers who rely on the

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flexibility of agency workers to meet the peaks and troughs of activity that occur in their business. Now is the time for employers to be considering what changes need to be made to their internal procedures before the new regulations come into force in October.

New levels for statutory payment rates

From 11 April 2011, statutory maternity pay, statutory paternity pay and statutory adoption pay will increase from £124.88 to £128.73 per week. The weekly earnings threshold (ie the amount that you need to be earning to qualify for these payments) will rise from £97 to £102.

Statutory sick pay (SSP) will increase from £79.15 to £81.60 per week, with the weekly earnings threshold for SSP also rising from £97 to £102.

Maternity allowance will increase from £124.88 to £128.73 per week, with the weekly earnings threshold remaining at £30.

Increase in maximum tribunal awards

From 1 February 2011, the maximum compensatory award for unfair dismissal will rise from £65,300 to £68,400. The maximum amount of a person's weekly pay that can be taken into account for the purposes of calculating certain other tribunal awards (including calculating any statutory redundancy pay) will rise from £380 to £400.

Fox is a City of London law firm specialising in employment, partnership and discrimination law
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