

EMPLOYMENT LAW DECEMBER 2009 UPDATE



1. Compensation limits – effective from 1st February 2010

As a result of RPI between September 2008 and September 2009 falling by 1.4%, for the first time the maximum compensation for dismissals will reduce:

- maximum compensatory award reduces from £66,200 to £65,300
- a “week’s pay” will remain at £380
- maximum redundancy payment will remain at £11,400 (20 years x 1.5 weeks x £380)
- guarantee payment (during a lay-off period) reduces from £21.50 to £21.20

2. National Minimum Wage

It is now (from 1st October 2009) illegal for employers to use tips to 'top up' workers' pay to meet the National Minimum Wage.

The minimum weekly earnings for apprentices in England aged 16 to 18 and those aged 19 and over in their first year as an apprentice are £95.

The current National Minimum Wage is as follows:

- The main rate (age 22 or more) is currently £5.80 per hour
- The development rate (age 18 to 21) is currently £4.83 per hour
- The youth rate (age 16 to 17) is currently £3.57 per hour

In response to a recommendation by the Low Pay Commission (LPC), the Government has accepted that the adult rate should be extended to 21 year olds effective from October 2010. Consultation is currently under way to consider the introduction of a NMW for apprentices.

3. Statutory Maternity, Paternity, Adoption & Sick Pay Rates – effective from 1st April 2010

Earlier this month, the Government announced that the standard rates of statutory maternity, paternity & adoption pay will increase from £123.06 to £124.08 effective from April 2010. The standard rate of statutory sick pay will remain at £79.15 a week.

4. Additional Paternity Leave – effective from April 2010

Additional Paternity Leave and Pay will enable employed fathers to take up to 26 weeks Additional Paternity Leave, some of which can be paid if the mother of the child has returned to work. The new provision will be available during the second six months of the child’s life, giving parents more choice in child care responsibilities and the option of dividing a period of paid leave entitlement between them.

HR Bespoke Solutions Ltd – Employment Law Update December 2009

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The Government intends to introduce Additional Paternity Leave and Pay alongside the extension of maternity pay to 12 months and for this to be in force from April 2010, effective for parents of babies due from 3rd April 2011.

5. Apprenticeships, Skills, Children and Learning Act – effective from April 2010

The right to request time to train will be phased in. It will be made available to employees in large businesses from April 2010 and extended to all employees from April 2011. The right to an apprenticeship is expected to come into force in 2013.

The Act will give:

- a right to an apprenticeship for suitably qualified 16 to 18-year-olds
- a right for employees to request time away from their duties to undertake training and a corresponding duty on employers to consider such requests.

6. Blacklisting of trade unionists to be outlawed – effective from early 2010

The Government is to introduce new rules to prevent employers from blacklisting workers for their trade union membership or activities. A public consultation on the subject was held over the summer of 2009, following evidence that a number of employers in the construction sector had been unlawfully vetting workers.

The regulations will:

- make it unlawful for organisations to refuse employment or sack individuals as a result of appearing on a blacklist
- make it unlawful for employment agencies to refuse to provide a service on the basis of someone appearing on a blacklist and
- enable individuals or unions to pursue compensation or solicit action against those who compile, distribute or use blacklists.

The Government plans to table the regulations for Parliament to consider as soon as possible. Provided Parliament gives approval, the regulations could be brought into effect early next year.

7. Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations 2010 – effective from April 2010

The Government intends to change the format and content of medical statements so they provide information that might help a patient return to work sooner. Rather than just saying a patient is, or is not, fit to work, the new statement will allow the doctor to say the patient “May be fit for some work now”. The doctor must then give details of the patient’s work limitations. Doctors will also be able to recommend job role changes such as altered hours.

It is also proposed that medical statements should only be issued when patients are unable, or have limited ability, to work — not as evidence that the patient is well.

The new statements will be computer-generated rather than paper-based and subject to Parliamentary approval, the new medical statement will be introduced in April 2010.

8. The Pensions Act 2007 – effective 6th April 2010

The Pensions Act 2007 contains powers to restore the link between the Basic State Pension and earnings, raise the State Pension Age gradually to 68 by 2046 and make the system fairer for women and carers by reducing the number of years needed for a full Basic State Pension to 30 from 6th April 2010 and introducing weekly credits to recognise and reward caring in the same way as working.

9. The Equality Bill 2008/9 - effective from 1st October 2010

The Bill is expected to receive Royal Assent in Spring 2010 and most of the provisions are expected to come into force in October 2010. It identifies nine 'protected characteristics':

- age,
- disability,
- gender reassignment,
- marriage and civil partnership,
- pregnancy and maternity,
- race,
- religion or belief,
- sex,
- sexual orientation.

More specifically, the Bill:

- allows the Secretary of State to order employers with more than 250 employees to publish information about pay disparities between male and female employees – although the Government has stated that it will not use this power before 2013
- abolishes the list of areas (i.e. mobility, manual dexterity, memory, etc.) upon which a disability must impact
- bans secrecy clauses which prevent employees from discussing their wages
- bans discrimination by association in accordance with European case law
- makes it legal for employers to positively discriminate in favour of a person from an under-represented group where candidates are equal — such positive discrimination will be purely optional and in no way an obligation.

The Bill is expected to come into force in Autumn 2010.

10. Agency Worker Regulations 2010 – effective by December 2011

These regulations will give agency workers the right to equal treatment with permanent staff on pay, holidays and other basic conditions after 12 weeks in a job.

Hirers of agency workers, provided by temporary work agencies, will have a duty to give agency workers equal treatment with permanent staff.

The agency will be responsible for any breach of a right to equal treatment, but will have a reliable defence if it has taken reasonable steps to obtain the necessary information from the hirer and has acted reasonably in determining the agency worker's basic working and employment conditions.

Agency workers will have the right to ask their agency for information relating to their equal treatment rights, and subsequently the hirer if they do not receive a response from the agency. Both hirer and agency will have 28 days in which to respond.

Hirers of agency workers will also have a duty to provide agency workers with information about vacant posts and access to collective facilities and vocational training from the commencement of the assignment.

11. The Pensions Act 2008 – effective from 2012

At the moment, employers are obliged to provide access to a Stakeholder Pension Scheme for their employees if they employ 5 or more people. There is no requirement for employers to contribute to the scheme.

From 2012, the Government proposes to provide access to a private pension to all employees aged between 22 and State retirement age, who are earning more than £5000 a year and are not currently enrolled in a workplace pension scheme. A system of automatic enrolment will mean that, instead of choosing whether to join a workplace pension scheme provided by their employer, all eligible employees will have to actively decide not to be in a scheme if they feel it isn't right for them. All qualifying employers will be required to contribute a minimum of 3% (on a band of earnings) to an employee's workplace pension scheme. This will supplement the 4% contribution from the employee and around 1% from the Government in the form of tax relief.

If the employer does not already offer a suitable workplace pension scheme, employees will be enrolled in the Government's new low-cost saving vehicle, the personal accounts scheme. This trust-based occupational pension scheme will be run in the best interests of its members. There will be a contribution limit of £3600 per year (based on 2005 earnings levels) and a general ban on transfers in and out the scheme, to focus the scheme on the target market.

For more information contact Phil Snelling:

Telephone: 07973 958149

Email: philsnellinghr@aol.com

Website: www.hrbespokesolutions.co.uk