

Employment Law Update: Expected Changes in 2007

1. New Statutory Rates and Limits

From 1 February 2007, the limits on Tribunal awards will change. In April 2007, maternity and other family payments will increase as will the amount of statutory sick pay. These rates and limits are summarised on the enclosed reference guide.

2. Maternity and Family Rights

As a result of the Work and Families Act 2006, women whose expected week of childbirth (or date of adoption) falls on or after 1 April 2007, will benefit from new maternity rights. In brief, this includes the following;

- ◆ Statutory maternity pay, maternity allowance and statutory adoption pay will be payable for 39 weeks (rather than the current 26 weeks);
- ◆ All pregnant employees will qualify for additional maternity leave (currently there is a requirement for employees to have at least 26 weeks service at the start of the 14th week before the expected week of childbirth);
- ◆ The period of notice that an employee must give when returning early from maternity leave will be 8 weeks (rather than the current 28 days);
- ◆ Removal of the exception for

employees who are currently exempted from a finding of automatic unfair dismissal where they do not allow an employee returning from additional maternity leave or additional adoption leave to return to the same or a similar job;

- ◆ The statutory maternity pay period will be able to start on any day of the week, concurrently with ordinary maternity leave (rather than the current requirement to start on the Sunday after the employee stops working); and
- ◆ Up to ten "Keeping In Touch" days can be undertaken where both parties agree that the employee returns to work during their leave period without losing their right to statutory maternity/adoption pay or maternity allowance (whereas currently any such work would result in the payments ceasing).

The Act also provides for the following changes to be introduced although as yet, there is no clear indication as to when these changes will come into force:

- ◆ The period of statutory maternity pay, statutory adoption pay and maternity allowance will be extended to 52 weeks; and
- ◆ A new right to additional paternity leave for fathers

Employment Team:

Helen Wyatt
hwyatt@gdlaw.co.uk

Clare Gilroy-Scott
cgilroy-scott:@gdlaw.co.uk

Katee Dias
kdias@gdlaw.co.uk

Belinda Copland
bcopland@gdlaw.co.uk

Key Employment Services:

Contractual

Drafting terms of business and terms of engagement;
Advising, drafting and negotiating 'one-off' client contracts

Regulatory

Advising on the impact of employment agencies and related legislation, and new developments

Employment

Drafting contracts of employment;
Advising on termination and unfair dismissal claims;
Enforcement of restrictive covenants;
Dealing with TUPE

February 2007

Employment Law Update: Employment Status of Temporary Workers

from leave and statutory pay if the mother returns to work after six months but before the end of her additional maternity leave period.

3. Flexible Working

From 6 April 2007, the Work and Families Act 2006 will introduce a new right for individuals who care for adults to request flexible working arrangements. At present, only parents of children under the age of six (or 18 if disabled), can request flexible working. Flexible working can include working part-time, flexitime, working from home and suchlike.

A "carer" is defined as an employee who is or expects to be caring for someone over the age of 18 who (a) is married to or the partner of the employee, (b) is a near relative of the employee or (c) falls into neither category but lives at the same address as the employee. A "near relative" includes parents, parents-in-law, adult children, adopted adult children, siblings, siblings-in-law, uncles, aunts, grandparents and step-relatives. It is expected that this definition will cover around 80% of all carers.

4. Statutory Holiday Entitlement

Currently under the Working Time Regulations 1998, an employee who works 5 days a week is entitled to 20 days' holiday. For part-time

the entitlement to 28 days for full-time employees (being 5.8 weeks holiday, rather than four weeks), again pro-rated for part-time employees. This is because the Regulations do not currently provide for paid leave on the eight bank and public holidays in Great Britain. The amendment does not mean that there will be a right for the additional holiday to actually be taken on a bank/public holiday, merely that there is an additional 1.6 weeks of paid annual leave.

It is expected that 0.8 weeks additional holiday (i.e. 4 days for a five day working week) will be introduced from 1 October 2007. However, consultation is ongoing as to whether the remaining 0.8 weeks should also be introduced from this date or whether it should be introduced at a later time or in phases.

5. Information and Consultation

The Information and Consultation of Employees Regulations 2004 came into force on 6 April 2005. The Regulations govern how employers consult with employees about economic and employment-related matters. The requirement to set up information and consultation arrangements is triggered only when employees have made a valid request to negotiate or the employer has been given a valid notification of an intention to negotiate.

Employment Law Update: Employment Status of Temporary Workers

has been given, the employer must negotiate with representatives of the employees to put in place an information and consultation agreement. In the absence of agreement within a specific time, the Regulations provide a set of standard information and consultation provisions which will automatically apply until any agreement to the contrary is reached.

Currently these Regulations only apply to undertakings (being a legal entity such as a company or partnership) which have 150 or more employees in the UK. However, from 6 April 2007, the Regulations will cover undertakings with 100 or more UK employees (and from 6 April 2008, will cover undertakings with 50 or more employees in the UK).

6. Pensions Consultation

The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 impose a requirement on employers to consult with their employees before making certain changes to their pension scheme, for example, when closing a scheme to new members, stopping further benefit accrual by existing members or changing the basis on which members accrue benefits.

The Regulations only apply to UK employers who sponsor

(including stakeholder pension schemes) where there are direct payment arrangements in place that enable an employer to make contributions for its employees. If an employer does not make any such contributions, they are not covered by these Regulations.

The pensions consultation requirements are being implemented in the same way as the Information and Consultation of Employees Regulations 2004 (see above) and therefore currently only apply to employers with 150 or more employees. However, from 6 April 2007, the Regulations will cover undertakings with at least 100 employees.

7. Smoking

A ban on smoking in enclosed public places, including most workplaces, will be introduced on 1 July 2007. Legislation will be introduced in due course governing signage requirements and outlining the penalties for breaches.

8. EU Membership: Bulgaria and Romania

Bulgaria and Romania became members of the European Union on 1 January 2007.

Most EU citizens do not require a work permit to work in the UK but, under transitional arrangements, most Bulgarians and Romanians will not have a right to work in the UK.

This guide is for general information and interest only and should not be relied upon as providing specific legal advice. In relation to any particular matter, readers are advised to seek advice.

Bulgarians and Romanians will be able to work in the UK without restriction if:

- ◆ They have completed, on or after 31 December 2006, twelve months continuous lawful employment in the UK;
- ◆ They have leave to enter or remain in the UK with no restriction on employment;
- ◆ They are married to a UK national or person in the UK;
- ◆ They are a family member of an EEA national who has the right to reside and work in the UK;
- ◆ They are a highly skilled worker who comply with the current rules for the Highly Skilled Migrants Programme;
- ◆ They are a student (and so are entitled to work for up to 20 hours per week); or
- ◆ They are a lower skilled worker under the Seasonal Agricultural Workers Scheme (employers will need to seek approval and the arrangements are subject to a quota).

It is unlawful to employ someone who is not entitled to work in the UK. Such an offence can lead to a fine of up to £5,000. Appropriate checks should therefore be undertaken by an employer prior to the employee commencing work, such as checking and taking a copy of the individual's passport or

9. Safeguarding Vulnerable Groups

The Safeguarding Vulnerable Groups Bill has been published and is expected to come into force sometime in 2007. It contains proposals for the establishment of a centralised vetting system for people working with children and vulnerable adults. This will allow employers to make instant checks of whether a prospective employee is barred. It also intends to make it possible for domestic employers, such as parents, to check whether private tutors, nannies and care workers are barred.

10. Discrimination in the Provision of Goods and Services

Part 2 of the Equality Act 2006 will come into force on 6 April 2007. This prohibits discrimination on the grounds of religion or belief or sexual orientation in the provision of goods and services.

If you would like further information about the issues raised in this newsletter, or any aspect of employment law and the recruitment industry, please do not hesitate to contact Helen Wyatt, Head of Employment hwyatt@gdlaw.co.uk or any other member of Goodman Derrick LLP's employment team.

Goodman Derrick LLP

90 Fetter Lane
London EC4A 1PT

tel +44 (0)207 404 0606

fax +44 (0)207 831 6407

www.gdlaw.co.uk