



## briefing

Employment, Pensions & Benefits - January 2010

### Looking ahead to 2010 - what you need to know

**As usual, there will be no let up in the pace of employment law developments in the year ahead and some of the key legislative changes are set out below.**

#### **1 February - decrease in compensatory award for unfair dismissal**

The annual change in statutory rates and compensation limits takes effect and unusually, there will be a reduction rather than an increase in the maximum compensatory award for unfair dismissal. Where the effective date of termination occurs on or after **1 February 2010** the maximum compensatory award for unfair dismissal will reduce from **£66,200 to £65,300**. The rate is set taking into account the Retail Price Index (RPI) for September and between September 2008 and September 2009 there was a 1.4% decrease in the RPI.

There will be no change however to the maximum amount of a week's pay which is used to calculate statutory redundancy pay and the basic award for unfair dismissal. This will remain at **£380** a week.

#### **6 April - the right to request time off for study or training**

Surprisingly, the introduction of the right to request unpaid time off for study or training on 6 April 2010 has had relatively little publicity even though it is estimated that around 11 million people will benefit from the new right. The statutory provisions relating to the right are set out in Part 6A of the [Apprenticeships, Skills, Children and Learning Act 2009](#) and the Department for Business Innovation and Skills (BIS) will be publishing employer guidance on the new right later this month.

The right to make a request for time away from normal duties for study or training will apply to all organisations who employ 250 or more employees and will extend to all organisations regardless of size from April 2011.

The employee's request can only be made if the purpose of the study or training is to improve:

- the employee's effectiveness in the employer's business and
- the performance of the employer's business

The sort of training envisaged is that which could lead to a nationally recognised vocational qualification such as an NVQ or training to develop specific job-related skills.

The new right is very closely modelled on the right to request flexible working. For instance, the employee must satisfy the eligibility criteria of being continuously employed for 26 weeks and the employer will need to seriously consider the request and arrange to meet with the employee to discuss the request. There will be a number of specified business grounds for refusing the request (similar to flexible working) including for example, the detrimental effect on ability to meet customer demand and detrimental impact on quality and performance. In addition, the employer can reject the request if the proposed study or training would not improve the employee's effectiveness in the business or the performance of the business. Note that if the request for time off is granted, the employer will not be obliged to pay the employee's salary whilst off work nor is there any obligation to pay for the training. The arrangements for the training will be subject to agreement between the employer and employee. As with the right to request flexible working, employees have the right not to be unfairly dismissed or subjected to any detriment for making or exercising the right to request time off for study and training.

In the current economic climate the number of requests for time off may be relatively low initially. Even so, employers and HR managers will need to put in place an appropriate policy for managing request for time off for study and training and ensure that those with responsibility for considering requests are fully aware of their obligations and responsibilities.

## 6 April - the right to additional paternity leave

The [Additional Paternity Leave Regulations 2010](#) come into force on 6 April 2010 and will apply to parents of children due on or after 3 April 2011. At present, statutory paternity leave is limited to two weeks paid leave of £123.06 a week which must be taken within 56 days of the birth and paternity leave is also available when a child is being adopted. The individual must have at least 26 weeks' continuous service and the leave must be taken as either one week's leave or two consecutive weeks' leave. This period of leave will be re-named Ordinary Paternity Leave and there will be a period of Additional Paternity Leave (APL) of up to 26 weeks but this can only be taken once the mother has returned to work.

The earliest start date of APL will be 20 weeks after the child's date of birth and fathers taking APL will be entitled to benefit from up to 10 'keeping in touch' days and the right to return to the same job on the same terms and conditions as before the APL began. The contract of employment will continue throughout APL and fathers will continue to benefit from the terms and conditions of employment except for remuneration. For further details see our [Bulletin no 19](#).

## 6 April - changes to 'sick note'

There will be a change to the format and content of the Medical Statement used by GPs relating to an individual's fitness to work from 6 April 2010.

The [Social Security \(Medical Evidence\) and Statutory Sick Pay \(Medical Evidence\) Amendment Regulations 2010](#) will enable GPs to record whether a patient is fit or not fit for work but also a new option to indicate where someone may be fit for some work now. This option is to be used where the GP considers that the individual could return to work if some aspects of the work were changed either temporarily or permanently. For example:

- a phased return to work
- altered hours
- amended duties
- workplace adaptations

It is important to note however that any changes to workplace or role changes must be with the employer's agreement. For further details of the policy background to these changes see our [Bulletin no 17](#).

## 12 April - increase in statutory payments

The rate of statutory maternity, adoption and paternity pay will increase from £123.06 to £124.88 a week. Note however that there will be no change to the rate of statutory sick pay of £79.15 a week.

## Spring 2010 - Equality Bill

The Equality Bill is expected to receive Royal Assent in spring 2010. The purpose of the Bill is to simplify current discrimination law and to introduce new measures to tackle discrimination and inequality.

The Bill will tackle discrimination in a number of key areas by:

- placing a new single equality duty on public bodies
- banning age discrimination outside the workplace
- introducing gender pay and equality reports
- permitting positive action
- strengthening the powers of Employment Tribunals
- protecting carers from discrimination
- improving protection from disability discrimination

Many of the provisions of the Bill are expected to come into force in October 2010 but we will continue to monitor progress of the Bill and will provide further updates in due course. It's not just legislative developments though. There are other key issues to be aware of. The government has brought forward its review of the default retirement age of 65 from 2011 to 2010. It is currently undertaking a major research project on the issue and seeking evidence of how the mandatory retirement age works in practice and the experiences of those organisations who do not have a retirement age at all. It is inevitable that the retirement age of 65 will change but will it be increased to a higher age or removed completely?

As for significant case law developments, probably one of the most challenging areas for employers is managing long-term sickness absence and the issues arising out of the accrual of statutory annual leave whilst off sick. This of course was the matter in dispute in the long running litigation [Stringer v HMRC](#) (see our [Bulletin no 18](#).) The difficulty at present is reconciling the decision in [Stringer](#) with the Working Time Regulations 1998. It is likely that the Regulations will need to be amended in due course or, at the very least, the government guidance on the Regulations amended. However, the government has made no announcement about this to date but further developments are likely in 2010. No doubt at the same time, the government will also look at the issue of re-arranging annual leave if an employee is taken ill or is injured before going on pre-arranged leave which was the issue arising in [Pereda](#) covered in our autumn 2009 Newsletter.

## More information

If you would like further information, or would like to discuss the potential impact of these decisions on your organisation, please call Debra Gers, or your regular Morgan Cole contact.



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