

hot news

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Consultation on extension of rights to flexible working to all employees

In a written answer to a question in the House of Commons on 12 July, the Secretary of State for Business, Innovation and Skills said he intends "to consult on plans to extend the right to request flexible working to all employees later in the year", and that the result of the consultation will "inform the timetable for implementation going forward."

Commenting, Matthew Farrow, CBI Head of Infrastructure said, "Although it's not feasible in all workplaces, employers are increasingly enabling staff to stagger their commutes and break out of the usual 'nine to five'."

More than one in five workers feel 'bullied' by their boss

More than one-fifth of workers admit to feeling bullied by their boss according to a survey conducted by HR consultancy, Reabur. The study of more than 1,250 individuals found that 21% of UK employees feel bullied by their boss and 28% feel picked on by a peer in the workplace. Only 8% admit to reporting the incidents, although 24% tell a colleague about their experiences and almost three-quarters (73%) tell their spouse.

Warning that plans to reform NHS could result in 25,000 job losses

Following publication of the White Paper "Equity and Excellence: Liberating the NHS" Andrew Lansley, the new Secretary of State for Health, has set out the Government's proposals to reform the NHS. These include proposals that all hospitals become a Foundation Trust or part of one.

The aim is to give the NHS more freedom from direct government control and allow greater generation of income from private patients. However, as part of the implementation, management costs are to be halved and it is estimated that around 25,000 redundancies could result as the government propose to channel the associated costs into front line services.

"Cracks" emerging in Employment Tribunal System

The Employment Lawyers Association (ELA) has called for a radical overhaul of Employment Tribunal procedure and administration as the Employment Tribunals Service increasingly struggles to cope with the huge increase in employment claims over the last year.

In July of this year, the trend continued and the Tribunals Service announced an increase of 56% in the number of claims accepted in 2009/10. This takes the number of claims to its highest ever level at a total of 236,100 claims.

On a related note, government consultation has begun regarding the possible merger of the tribunals and courts services.

Kraft Foods UK Ltd v Hastie, EAT

Mr Hastie worked for Kraft Foods UK Ltd for nearly 40 years. In 2008, Kraft announced redundancies and Mr Hastie volunteered on the basis that he would receive contractually enhanced redundancy pay. The contractual redundancy scheme entitled employees to receive 3.5 weeks' uncapped pay for each year of service. Taking into account his long service, Mr Hastie had calculated that he would be entitled to £90,100.98. However, a cap applied to the maximum amount payable under the scheme so that the total sum could not exceed that which an



employee would have earned if they had remained in employment until retirement at 65. As Mr Hastie had less than three years to go until reaching retirement age, his payment for voluntary redundancy was capped at £76,560.

Mr Hastie brought a claim for age discrimination on the grounds that this cap was a provision, criterion or practice that disproportionately affected employees approaching retirement age. Kraft argued that the cap was necessary in order to prevent employees receiving a windfall and therefore was justified. The tribunal found that the impact of the cap was not justifiable - Kraft appealed.

The EAT considered the purpose of a redundancy payment was to provide 'compensation for loss of expectation of continued employment'. On that basis a provision to prevent an employee receiving a 'windfall' payment could be justified. Without a cap in place the compensation payable could exceed what is necessary to achieve the objective of the payment in the case of employees close to retirement. The EAT therefore found it to be a proportionate means of achieving a legitimate aim. The appeal was allowed and the claim of age discrimination was dismissed.

Nicolson Highlandwear Ltd v Nicolson, EAT

Mr Nicolson owned a highland clothing business. He was dismissed for fraudulent conduct and brought a claim for unfair dismissal.

A tribunal had concluded that Mr Nicolson's fraudulent conduct led to his dismissal but found his claim to be automatically unfair due to his employer's failure to follow a fair procedure.

The employer applied for costs based on Mr Nicolson's unreasonable behaviour in bringing the case. On appeal, the Scottish EAT held that he had acted unreasonably in pursuing a claim in which he knew that he had acted dishonestly, and that this had caused his dismissal. Even though he was successful in part of his claim, this did not necessarily mean it was not unreasonable of him to bring it.

The EAT also disagreed with the finding of the tribunal that it was open to the claimant to pursue a claim simply to have his dismissal declared unfair. Unlike discrimination cases, a tribunal has no power to make such a declaration in an unfair dismissal case and the powers of the tribunal are limited to awarding reinstatement, re-engagement and/or compensation.

This may be a useful authority for employers facing seemingly vexatious claims. However, the EAT's suggestion that a claimant has no right to bring a claim simply for a finding of unfair dismissal is controversial as there is contrary authority on this point.

Seldon v Clarkson, Wright and Jakes (Court of Appeal)

Leslie Seldon claimed age discrimination after being forced to retire as a partner of a law firm at 65. The default retirement age, which allows employers to force the retirement of employees, did not apply because Mr Seldon was a partner.

The case went to the Court of Appeal. The court held that the partnership had not acted unlawfully by compulsorily retiring Mr Seldon because he was 65 years old.

The court decided that the aims behind the mandatory retirement were consistent with the social or labour policy in the UK that justified the introduction of the Age Regulations in the first place.

The court held that the mandatory retirement age of 65 contained within the partnership deed could be justified on the basis of both encouraging recruitment and retention of associates and enhancing collegiality. This was legitimate because one of the government's stated reasons for allowing differential treatment was to provide a "greater likelihood of employment for young persons and reasonable prospects of promotion".

More controversially, the appeal judges also held that one of the aims of the mandatory retirement age, which was avoiding the need to performance manage partners out of the firm, could also be legitimate, because it was intended to produce a happy workplace.

Buchanan and anor v Skills Development Scotland Co Ltd (ET)

In this case, the Edinburgh Employment Tribunal held that TUPE cannot be used as an excuse for not addressing the gender pay gap.

The claimants brought equal pay claims after learning that a male colleague was being paid substantially more for doing the same job.

Although the male colleague's higher pay dated from when he and the claimants were TUPE transferred to the

present employer, the employer continued to increase his salary after a certain period, maintaining the differential.

The tribunal had to consider whether the pay differential between the claimants and their male colleague was due to a genuine material factor other than sex; in this case, the protection of the man's contractual terms under TUPE.

The tribunal considered that although there may originally be a good reason for paying different rates for the same work, it was not satisfied that there was any obligation on the respondent to continue to increase the salary after a certain date.

Implementation of the Bribery Act delayed

The government has just announced that implementation of the Bribery Act will be delayed until April 2011 to allow time for consultation on the "adequate procedures" defence. The consultation will be launched in September with the aim of publishing guidance in the new year to ensure companies know how to comply with the new laws before the act commences in April 2011.

This decision follows strong concerns from companies that the act could adversely affect reputations and reduce profits. However, the delay and additional consultation has led to concerns the new laws will be altered and made less punitive.

Proposal to scrap default retirement age

Following publication of a consultation document on 29 July 2010, the government has outlined its proposals to phase out the default retirement age and the associated statutory retirement procedures. The proposals include the abolition of the default retirement age on 1 October 2011 with transitional provisions planned to come into force from 6 April 2011. It is proposed that from 6 April 2011, employers will be unable to rely on the default retirement age when giving employees notice of retirement.

Additional information

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