



EMPLOYMENT UPDATE

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SOLICITORS

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Redundancy Pay Increase

The Chancellor has announced in his Budget that the cap on an employee's gross weekly salary for the purpose of calculating redundancy payments is to increase from £350 to £380 per week, possibly to take effect on 1st October. However, this is still below the average gross weekly salary of £505.

Small employers may struggle to pay the maximum redundancy award in the current economic climate which increases from £10,500 to £11,400.

No announcement was made as to whether the gross weekly salary for the purpose of calculating the basic award in unfair dismissal claims was to be similarly increased.

Equal Pay Comparators

In a decision which will affect a large number of cases currently before tribunals, the Court of Appeal has held that Employees do not need to state who their comparators are when putting in a grievance in equal pay claims.

Age Bar Not Justified

A teacher's employment was terminated when he was removed from the payroll in anticipation that he would sign a compromise agreement. When the compromise agreement was not finalised and the employee decided to bring a claim it was held that he was unable to do so because he had missed the normal 3 month deadline for initiating an unfair dismissal.

His employment effectively terminated when he was removed from the payroll and knew that he was not going to be paid and not at a later date, even though negotiations aimed at terminating his employment were ongoing.

The Equality Bill 2009 Published

The long awaited Equality Bill was published early last month. The Bill primarily aims to consolidate and harmonise the existing and disparate discrimination laws into one statute and as such will be of more interest to lawyers. However, the Bill introduces a number of new measures which will have a direct impact on the business community:-

- a) The Bill allows organisations to positively discriminate in favour of disadvantaged individuals / groups when recruiting (but only when faced with candidates who are otherwise equally well qualified);
- b) Allows the Government to order the publication of pay disparities between male and female employees (but only in organisations with 250+ employees and not for four years);
- c) Outlaw pay secrecy clauses in employee contracts;
- d) Formally outlaws discrimination by association with a disadvantaged group or individual;
- e) Imposes a duty on some key public bodies to take account of socio-economic disadvantage when making strategic decisions; and
- f) Abolishes the areas where disability must impact (e.g. mobility, memory, etc. in favour of a more inclusive test.

Can Majority Shareholders Claim Redundancy Payments?

The Court of Appeal recently considered whether controlling shareholders and Directors can be considered employees when their companies became insolvent so as to enable them to claim redundancy and other statutory payments from the National Insurance Fund.

Apparently there were 12,000 such claims on the N.I. Fund last year!

In the case, two controlling shareholders and directors of two insolvent companies were held to also be employees and who were therefore entitled to claim against the N.I. Fund.

However, the Court held that each case must be taken on its merits and noted that such individuals would not be employees where:-

- a) The Company is a sham (i.e. the alter ego of an individual);
- b) The employment contract was entered into to, for example, defraud the N.I. Fund; or
- c) Where the parties do not actually conduct their relationship in accordance with the terms of an employment contract.