

# EMPLOYMENT UPDATE



**Reynolds Parry Jones**  
SOLICITORS

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## Employment Law and the Election—Likely Coalition Changes

The new government has planned numerous changes to employment law. However, actual implementation will depend on the formulation of more detailed proposals, political inertia and the parliamentary timetable.

It is likely that new 'family' employment policies will be introduced including "...shared parenting from the earliest stages in pregnancy" and the extension of right to request flexible working to all employees.

The coalition is likely to abolish the default retirement age of 65 but again no timetable is given for this and it is unknown as to whether this will occur incrementally or in one go.

Tax changes proposed include the likely raising of the income tax personal allowance from April 2011 to as much as £10,000 and a 1% increase in National Insurance Contributions for employers and employees. Measures for simplifying the tax treatment of the self employed are also proposed although there are few details in this respect.

Businesses will welcome the "one in one out" proposal for new regulations and the imposition of 'sunset' clauses to ensure that all business regulation is periodically reviewed for relevance and necessity.

It is also likely that new legislation will limit immigration, reform CRB checks, improve employee access to employment tribunals and make small but important changes to a range of existing employment laws.

## Ruling On ACAS Disciplinary Code of Conduct

The ACAS Code of Conduct on disciplinary procedures recently imposed an uplift on damages of 25% if an employer failed to follow the Code. The Employment Appeal Tribunal has now determined that the following factors will be taken into account when determining the size of the uplift:-

1. whether procedures were ignored completely or applied to some extent;
2. whether the failure to follow procedure was deliberate or inadvertent; and
3. whether the employer had mitigated any initial failings.

## Referee Decision is Final!

An Employment Tribunal has held that three professional football referees had been discriminated against on grounds of their age when they were forced to retire at 48 years of age.

The age limit could not be objectively justified when there were less discriminatory means of achieving the employers aims such as regular competence and fitness tests.

However, additional unfair dismissal claims were rejected on the ground that the referees were not 'employees'.

The ruling will make it very difficult for employers to justify fixed employee retirement ages.

## The 'Small Print'

The Employment Appeal Tribunal has re-instated an employee's claim after it was initially struck out because the text was small and difficult to read.

An Employment Tribunal had originally struck out the claim for being 'illegible'. However, the EAT ruled that a claim should be accepted if it could be read with a magnifying glass and the proper course of action would be to allow the employee to resubmit their claim within defined time limits in a more legible form.

## Doctor's Suspension Was Lawful

The General Medical Council had lawfully suspended a doctor for 12 months, in part for refusing to take a medical competency assessment because he did not like the form of assessment.

The High Court held that it was for the General Medical Council to make decisions regarding medical competence and refused to interfere with the GMC's ruling as to the doctor's fitness to practice, the content of the fitness test or the decision to suspend.

## Prison Officer's Dismissal Was Fair

The EAT has held that a prison officer at HMP Pentonville who was dismissed following allegations of orchestrating violence amongst prisoners and planting drugs in April 2006 was fairly dismissed.

The officer was investigated by the police at the time but the matter never resulted in his prosecution. The officer had unsuccessfully sought to argue that the ensuing delay in his dismissal on 6th February 2008 made it unfair and that the Governor did not genuinely believe that the officer had committed an act of gross misconduct.

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