

Welcome to the April issue of Actons' employment law update. We hope you will find it helpful to receive a digest of key developments on a monthly basis. We welcome your feedback - please let us know if you have any suggestions for improvements or alternative topics

Never too Old - age discrimination - the essentials

The Employment Equality (Age) Regulations, subject to approval by both Houses of Parliament, which will be in force on 01 October 2006 have now been published. Many of the provisions are similar to the sex, race and disability discrimination legislation. The age discrimination regime will affect all employers and employees at some point - particularly when it comes to retirement.

The Regulations make it unlawful to discriminate, directly or indirectly on the grounds of an employee's age. There are also provisions to make victimisation and harassment on the grounds of age unlawful. There is no limit on the amount of compensation that can be awarded for successful age discrimination claims.

The Regulations apply to discrimination in employment and vocational training but also apply to recruitment of employees. They apply to retirement and also remove the upper age limit for unfair dismissal and redundancy rights, unless there is a genuine retirement. The age limits for Statutory Sick Pay, Statutory Maternity Pay, Statutory Adoption Pay, and Statutory Paternity Pay have been removed. The upper (65) and lower (18) age limits for Statutory Redundancy Pay have been removed - but the age banded system for payments remains, to reflect the fact that older workers are more likely to be unemployed for longer than younger workers.

From 1 October 2006, employer's cannot retire employees below the employers normal retirement age. If there is no normal retirement age, the default retirement age is 65. If the normal retirement age is below 65, it must be objectively justified.

New procedures mean that employers will have to give employees advance notice of retirement and let employees know that they can ask to work for longer. It

is important to note that the notification of retirement date must be given specifically to the particular employee, it is not sufficient to include in a contract, policy or procedure given to the employee.

An employee's request to continue working must be a request for one of three options: either that he continues indefinitely, continues to a stated date or continues for a stated period. Employers are under a duty to consider a request to continue working past the normal retirement age - similar to the duty to consider a flexible working request.

Employers who want to terminate the employee's employment before the normal or the default retirement age must have another fair reason for dismissal and follow the normal dismissal procedures.

Transitional arrangements will apply to retirements from 1 October 2006 to 31 March 2007. They are set out in schedule 7 to the regulations.

For updates on the progress of the legislation: www.dti.gov.uk/er/equality/age.htm

Off Sick!

Statutory Sick Pay (SSP) is administered and paid for by employers, who have a statutory liability to pay SSP for up to 28 weeks, to any employee incapable of work under their contract of service, for four or more days in a row and who satisfy the qualifying conditions. Employers are entitled to ask for reasonable evidence of incapacity for work, for example a self-certificate for spells of four to seven days or a doctor's statement for periods after the first seven days.

As of 6 April 2006, the rate of statutory sick pay is increased to £70.05 per week.



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Having a baby?

Is one of your employees expecting to give birth or adopt a child after 6 April 2007?

New employment legislation regarding such a situation is due to come into force on 1 October 2006:

- * Mothers will see their statutory maternity allowance and pay increase from 6 months to nine months;
- * Those who adopt will also see their statutory adoption pay increase by the same amount;
- * Fathers will be entitled to take leave to care for a child and receive pay for doing so, provided certain conditions are met;
- * More employees with caring responsibilities will be able to request to work flexibly.

Minimum Wage Increases

On 1st October 2006 the national minimum wage will increase:-

- * from £5.05 to £5.35 for adults
- * from £4.25 to £4.45 for those aged 18 to 21
- * from £3.00 to £3.30 for 16 and 17 year olds.

The meaning of Disability

The Secretary of State for Work and Pensions has issued revised guidance on what constitutes a disability: Guidance on matters to be taken into account in determining questions relating to the definition of disability. The Guidance comes into force on 1st May 2006 and

should prove helpful in matters where it is unclear if a person has a disability for the purposes of the Disability Discrimination Legislation.

The Guidance gives examples of what constitutes a disability under the legislation, and, more particularly, what constitutes:

- physical or mental impairment;
- substantial adverse effects;
- long-term adverse effects;
- effects on normal day-to-day activities

For a copy of the guidance see

http://www.drc-gb.org/documents/Final_version_of_guidance_Feb06_as_submitted_to_DRC_16-03-06.doc

More on Age Discrimination

As we report above, age discrimination legislation is due to come into force on 1 October 2006. ACAS (Advisory, Conciliation and Arbitration Service) has published an age checklist to help employers prepare for the coming into force of this legislation.

The checklist provides useful tips to employers to enable them to start thinking of how to comply with the legislation when it does come into force:

* Recruitment advertisements:

- avoid specifying a minimum/maximum length of experience as this disadvantages certain age groups
- advertise in a cross-section of media so you get in touch with all age groups

* Application forms:

- do not ask for date of birth (this information can go on your monitoring form) or unnecessary dates of employment history
- use skills/competence-based application forms

* Selection procedures :

- train managers to avoid stereotypes e.g. the assumption that younger workers do not have the skills for management or older workers are just coasting towards retirement
- monitor the results of your recruitment and selection. Do you need to take positive action to help recruit certain age groups?

* Training:

- make sure training is open to all - do not overlook an older person for training

thinking they may not be interested in career development

* Performance appraisal:

- set the same standards of performance regardless of the age of the employee
- when writing appraisal reports avoid comments like 'does well despite their age' or 'shows remarkable maturity for their age'

* Redundancy policy:

- review your policies: use of LIFO (last in, first out) or length of service to select employees for redundancy may have a discriminatory outcome

* Equality policy:

- add age to your equality policy and talk to your employees about how you tackle age discrimination
- make sure your bullying and harassment policies cover age

* Know your workforce

- think about who is likely to retire when (the government plans to introduce a national default retirement age of 65)
- consider flexible working for older workers

The checklist can viewed on the ACAS website:

<http://www.acas.org.uk/index.aspx?articleid=1034>

Should you need advice or assistance in relation the drafting of or implementation of any of the above, please contact our Employment Law Team.

Contact Details

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Please do not hesitate to forward this update to any colleagues or business contacts you feel would benefit from it.

This update is provided free of charge and is a summary of the legal position at April 2006. It is not intended as a substitute for detailed advice. If you require any further information or have any queries relating to issues raised please contact a member of the Employment Team on 0115 9 100 200. Copyright Actons 2006