

Employment ACT NOW



An employment guide from



DISPUTE RESOLUTION – THE WAY FORWARD



In their place will be a revised Advisory Conciliation and Arbitration Service (ACAS) Code of Practice supported by non-statutory guidance aimed at encouraging employers and employees to resolve issues both earlier and informally. It will not apply to dismissals due to redundancy or the non-renewal of fixed-term contracts on their expiry.

The Act provides for the complete repeal of the statutory dispute resolution procedures and related provisions dealing with procedural unfairness in dismissal cases.

In addition, the Act will:

- confer on ETs' discretionary powers to increase or decrease awards by up to 25 per cent if parties have failed reasonably to comply with a relevant statutory code;
- amend ETs' powers by which they may reach a determination without a hearing;
- allow ETs to award compensation for financial loss in certain types of monetary claim; and
- make changes to the law relating to conciliation by ACAS, removing the fixed periods for conciliation.

Employers are reminded that until the law is changed, they must follow the existing statutory dispute resolution procedures when dismissing staff and handling grievances.

The ACAS Code of Practice can be found at:
www.acas.org.uk/CHttpHandler.ashx?id=961&p=0.

Please contact us for advice on any employment law matter.

SPRING 2009 IN BRIEF

DISCRIMINATION BY ASSOCIATION

The EU Equal Treatment Framework Directive requires member states to have in place laws that protect against discrimination by association. The Employment Tribunal has held (Coleman v Attridge Law) that although the Disability Discrimination Act 1995 does not make this clear, it can be interpreted as providing protection to a non-disabled employee who is treated less favourably because of their caring responsibility for someone else with a disability.

TOUGHER PENALTIES FOR MINIMUM WAGE CHEATS

The Employment Act 2008 contains measures to increase the penalties for those who break National Minimum Wage (NMW) laws.

The maximum penalty for underpayment of the NMW will be increased from a £5,000 fine to an unlimited fine with the most serious cases of non-compliance tried in the Crown Court.

ON 6 APRIL 2009 THE EMPLOYMENT ACT 2002 (DISPUTE RESOLUTION) REGULATIONS 2004 WILL BE REPEALED. THEY WILL BE REPLACED BY A NEW FRAMEWORK BASED ON PROVISIONS OF THE EMPLOYMENT ACT 2008 WHICH AIM TO PROVIDE EMPLOYEES AND EMPLOYERS WITH GREATER FLEXIBILITY TO DEAL WITH WORKPLACE DISCIPLINE AND GRIEVANCE ISSUES IN A WAY WHICH SUITS THEM BEST.

The changes follow an independent review, carried out by Michael Gibbons, a member of the Department for Business, Enterprise and Regulatory Reform's Better Regulation Commission, of the workings of the statutory dispute resolution procedures, which were introduced in October 2004. The procedures were intended to reduce the number of Employment Tribunal (ET) claims, but the review found that they had led to workplace disputes becoming formalised, with lawyers becoming involved at an earlier stage in proceedings than had previously been the case.

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AGE DISCRIMINATION AND SELECTION FOR REDUNDANCY

Rolls Royce and Unite, the Union, recently sought a ruling as to whether or not the length of service criterion in collective agreements regarding redundancy amounted to unlawful indirect age discrimination against younger employees under the Employment Equality (Age) Regulations 2006.

The High Court ruled that although the criterion adopted did discriminate against younger workers, it could be objectively justified as a proportionate means of achieving a legitimate business aim – i.e. that any redundancy should be carried out ‘peaceably’ and be perceived as fair.



The scheme was therefore covered by Regulation 3(1) of the Regulations.

The Court also ruled that giving points for long service as one part of a redundancy

selection ‘matrix’ conferred a benefit on the employee concerned as it might lead to the retention of employment which would otherwise be lost.

As such, it was probable that this would be regarded as reasonably fulfilling a business need within Regulation 3(2), which simply requires the employer to justify the impact of an age related award made only to employees whose length of service exceeds five years. However, permission was given to appeal this ruling on the ground that it was ‘clearly an important point for both parties’.

AGENCY WORKERS DIRECTIVE APPROVED

THE EUROPEAN PARLIAMENT HAS FINALLY APPROVED THE DRAFT TEMPORARY (AGENCY) WORKERS DIRECTIVE.

A COMPROMISE DEAL MADE BETWEEN THE GOVERNMENT, TRADE UNIONS AND EMPLOYERS MEANS THAT UK AGENCY WORKERS WILL NOT ACQUIRE THE RIGHT TO EQUAL TREATMENT COMPARED WITH PERMANENT WORKERS (IN TERMS OF BASIC WORKING AND EMPLOYMENT CONDITIONS) UNTIL THEY HAVE BEEN IN A GIVEN JOB FOR 12 WEEKS.

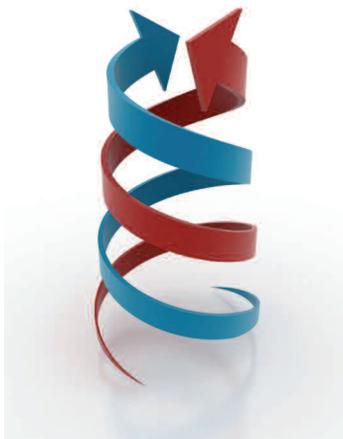
EU MEMBER COUNTRIES HAVE THREE YEARS TO INCORPORATE THE PROVISIONS OF THE DIRECTIVE INTO NATIONAL LAW.

ANNUAL INCREASE IN TRIBUNAL AWARDS

THE EMPLOYMENT RIGHTS (INCREASE OF LIMITS) ORDER 2008, WHICH DETAILS THE ANNUAL INFLATION-LINKED INCREASE IN LIMITS ON THE AMOUNTS WHICH CAN BE AWARDED BY EMPLOYMENT TRIBUNALS, WAS MADE ON 24 NOVEMBER 2008 AND APPLIES WHERE THE APPROPRIATE DATE FALLS ON OR AFTER 1 FEBRUARY 2009.

The main increases in compensation limits are:

- the maximum compensatory award for unfair dismissal has increased from £63,000 to £66,200;



- the maximum amount for a week’s pay (for calculating various Tribunal awards, including the basic award or redundancy payment) has increased from £330 to £350; and
- the limit on the amount of guarantee payment payable to an employee in respect of any day has increased from £20.40 to £21.50.

There is no statutory cap on the amount a Tribunal can award in discrimination cases.

The full list of the increases can be found in the Schedule to the Order at:
www.opsi.gov.uk/si/si2008/uksi_20083055_en_1

Allan Janes
solicitors

21-23 Easton Street, High Wycombe, Buckinghamshire HP11 1NT
Tel: (01494) 521301 Fax: (01494) 442315

www.allanjan.es.com

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