

Changes in Employment Law

Employers are reminded to prepare themselves for changes to employment law set for introduction this year, as the Government is expected to put forward a number of measures aimed at reforming employment law.

Key Proposals

The key proposals are as follows:

- The unfair dismissal qualifying period to increase from one year to two years;
- The requirement to lodge all Tribunal claims through ACAS (in order to seek, to mediate the claim) before lodging it at Tribunal;
- Introducing “protected conversations” to allow employers to raise workplace issues in an open way and free from worry that the conversation could be relied upon as evidence at a Tribunal hearing;
- The possibility of reducing minimum periods of collective redundancy consultation from 90 days to 60, 45 or 30 days;
- Options for a “rapid resolution scheme”, to enable simple claims (such as holiday pay

disputes) to be settled within three months;

- Amendment to Section 147 of the Equality Act 2010 to clarify the confusion that arose, after the introduction of the Equality Act, as to whether Compromise Agreements can be used to settle discrimination claims;
- Closing the loophole in whistle blowing law whereby a complaint about a breach of the employment contract can count as a “qualifying disclosure”;
- Financial penalties to be introduced on employers who breach employment rights, to be payable to the Exchequer;
- A review of the Employment Tribunal rules of procedure to include changes to costs and deposit orders and fees for lodging Tribunal claims;
- The law on maternity and paternity leave to be modernized, with greater emphasis on involvement for fathers;
- The possibility of minimizing the dismissal procedures, potentially by changing the ACAS Code of Practice.

2012 Annual Compensation Limits

The new compensation limits, adjusted as always in line with the Retail Price Index, which take effect from 1st February 2012, will be:-

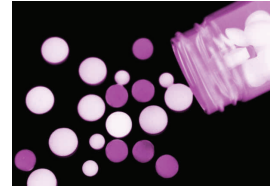
- A week's pay—£430 (currently £400) for the purposes of calculating statutory redundancy etc
- Maximum Compensatory Award in the Employment Tribunal—£72,300 (currently £68,400)



Statutory Benefits from April 2012

The new proposed rates of statutory benefits which will apply from April 2012, are:

- Statutory maternity pay, statutory paternity pay and statutory adoption pay will increase from £128.73 to £135.45. The weekly earnings threshold for these payments will rise from £102.00 to £107.00.
- Maternity allowance will increase from £124.88 to £135.45, with the earnings threshold remaining at £30.00.
- Statutory sick pay will increase from £81.60 to £85.85, with the weekly earnings threshold also rising from £102.00 to £107.00.



TUPE

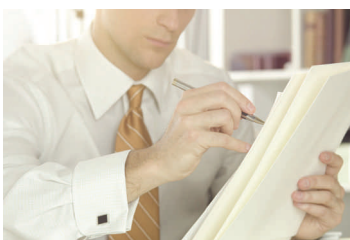
The Government will also review the effectiveness of the TUPE Regulations (the Transfer of Undertakings (Protection of Employment) Regulations) which protect employees rights when a business is sold or transferred.



In the meantime, in the recent decision of *Spaceright Europe Ltd v Baillavoine and another*, the Court of Appeal has held that a pre-transfer dismissal can still be “connected with the transfer”, and therefore potentially automatically unfair, irrespective of whether the identity of the buyer is known at the time of the dismissal.

Also, in the case of *Key2law (Surrey) LLP v Gaynor De'Antiquis*, the Court of Appeal has held that administration proceedings under Schedule B1 of the Insolvency Act 1986 cannot constitute, “insolvency proceedings...” within the meaning of regulation 8(7) of the TUPE Regulations 2006, as the test is absolute and not fact-based.

Small Employers



The Government plans to introduce simplified dismissal procedures for micro employers with less than ten employees, and introduce no-fault compensated dismissals.

However, as many details are yet to be confirmed, we will have to wait and see which changes are implemented.

Ultimately, Employers will need to review and amend their employment policies and procedures once the proposals are confirmed. In the meantime, the start of this year is a good time to review current policies and procedures.

For further information on any of the above topics please contact:

Andrew Egan:
andrew.egan@clmlaw.co.uk
Tel: 01635 521212
Freephone: 0800 180 4835

James Woodhouse
james.woodhouse@clmlaw.co.uk
Tel: 01635 521212

Disclaimer : The materials contained in this Newsletter are provided for general information purposes only and do not constitute legal or other professional advice. We accept no responsibility for any loss which may arise from reliance on information contained in this Newsletter.

Be Prepared ! Forthcoming changes to Employment Law

The government intends to bring into force a number of changes to employment law in 2012. Your business needs to be aware of the following changes.

April 2012 changes

Unfair dismissal qualifying period to be increased

The qualifying period for unfair dismissal claims will be increased from one to two years. It is unclear at this stage whether the new qualifying period will apply to existing employees or only to new starters. There will continue to be no qualifying period for discrimination and whistleblowing claims.

Employment Tribunals

Cost Awards	The maximum amount of costs a Tribunal can award (without referring the case to the County Court for detailed assessment) will increase from £10,000 to £20,000.
Deposit Orders	The amount of the deposit a Tribunal will be able to order a party to pay will increase from £500 to £1,000.
Witnesses	Tribunals will be given powers to direct parties to bear the costs of witness attendance, including the costs of witnesses called by the successful party. The Government will withdraw state-funded

Financial penalties for employers

- The Government intends to introduce financial penalties for employers who lost at an Employment Tribunal. The penalties are expected to equate to half the total award made by the Tribunal, with a minimum threshold of £100 and a maximum cap of £5,000.
- Where a non-financial award is made, the Tribunal will be able to ascribe a monetary value.
- The penalty will be reduced by 50% if it is paid within 21 days.
- The levy of a financial penalty will be at the Tribunal's discretion; and will not be automatic.

ACAS Conciliation

- Claimants will be required to submit details of their dispute to ACAS first, at which point they will be offered pre-claim conciliation for a period of one month. If conciliation is refused by either party, or is unsuccessful, the Claimant will be able to go ahead and present their claim to the Employment Tribunal.
- If the parties enter into conciliation, this will "stop the clock" on the limitation period to present the claim to the Employment Tribunal. The Claimant will have one month after the conclusion of conciliation to present their claim to the Tribunal.

Further information:

If you have any queries about the content of this checklist, please contact Andrew Egan on 01635 521212 or andrew.egan@clmlaw.co.uk