

# SUMMARY OF OCTOBER 1ST CHANGES

The Government's decision to set aside two dates in the year for the introduction of new employment legislation has proved popular. Recent reports suggest that the practice will be extended to all business related legislation. However the downside is that for employers and employment advisors there is a huge amount to read and digest in October and April.

In this month's bulletin we have set out a summary of the main employment law changes that come into effect on 1 October 2004.

### **Statutory Dismissal and Grievance Procedures**

Employment Act 2002 (Dispute Resolution) Regulations 2004  
From 1st October, mandatory dismissal procedures exist which, if not followed by employers, give employees the right to claim automatic unfair dismissal (subject to the one year qualification period), plus an increase in compensation.

In addition, a mandatory grievance procedure debars employees from bringing most types of tribunal claims unless they have first lodged a written grievance with the employer and waited 28 days.

### **New Tribunal Rules of Procedure**

The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004  
The main changes are:

- The Originating Application and Notice of Appearance will now be called the Claim Form and Response Form.
- The new prescribed forms that are 9 and 5 pages long respectively will have to be used from April 2005 or the Claim/Response will be rejected.
- There will be 28 (not 21) days for the Respondent to file the Notice of Appearance; but time will run from the date the Response Form is sent out rather than received.
- An early sifting process will

be introduced. Default judgments will be issued where a claim is uncontested. A Default judgment can be entered for a money sum, where it can be assessed from the contents of the Claim Form, not just for liability with award to be assessed.

- There will be a time limit set on ACAS's duty to conciliate. In most cases this will be 13 weeks from the start of the claim however in some cases that are considered less complex, for example, unlawful deductions from wages or statutory redundancy pay, this will be reduced to 7 weeks. No hearing can take place during this 'conciliation' period. After this period ACAS still has the power to conciliate but is under no duty to do so.
- There are substantial changes to costs rules, including costs awards for preparation time for unrepresented parties, and a power to make wasted costs orders against representatives.
- The Register of Tribunal claims will no longer contain the names and addresses of the parties (often

used by representatives engaging in 'ambulance chasing'). Now it will just contain the decision and any written reasons.

### **Disability Discrimination**

Disability Discrimination Act (Amendment) Regulations 2003

Main changes include:

- The small employer exemption is removed - employers with less than 15 employees have to comply with the Act.
- The justification defence is abolished for failures to make reasonable adjustments. If a reasonable adjustment is not made, the employer is liable.
- A new definition of 'direct discrimination' is introduced. This is defined as when an employer treats an employee less favourably on the grounds of the disability. This type of discrimination cannot be justified. Discrimination that is disability-related, in other words less favourable treatment for a reason caused by the disability can be justified. For example, dismissal following a long term absence caused by a disability.
- A formal definition of 'harassment' is included in the legislation.
- Disability discrimination protection is extended to previously excluded sectors including the police.

### **Equal Pay**

Equal Pay Act 1970 (Amendment) Regulations 2004

- The tribunal will be allowed to decide whether work is of 'equal value' without first obtaining a report from an independent expert. Previously, the tribunal had to obtain a report unless satisfied there was no reasonable prospect of an equal value claim succeeding.
- Secondly there will be a strong presumption that, where a job evaluation study has allocated different values to the man and woman's jobs, then the man cannot be a valid comparator.

### **National Minimum Wage**

The National Minimum Wage Regulations 1999 (Amendment) Regulations 2004

- The main "adult" rate for workers 22 and over increases to £4.85ph.
- The 'development rate', for workers aged 18-21 inclusive, increases to £4.10ph.
- And there is a new rate for 16 and 17 year olds, above compulsory school leaving age, of £3.00ph. This new rate does not apply to 16 and 17 year old apprentices
- Piece rate workers will have to be paid the minimum wage for every hour they work or a fair piece rate initially set. From 1 October this will be 100% of the minimum wage and it will increase to 120% in April 2005.

### **Employment Relations Act 2004**

The parts of this that come into force on 1 October:

- Strengthen the protection of workers subjected to detrimental treatment as a result of union membership.
- Introduce the right for the worker not to be offered inducements by the employer to refrain from participation in union activities such as collective bargaining
- Extend the role of the companion in disciplinary and grievance hearings to allow the companion to present the worker's case, and to sum up and respond on the worker's behalf to any view expressed at the hearing.

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For further information about Employment generally please contact:

Employment Department  
+44 (0)870 365 8000

If you have any comments or would prefer to receive our Employment information electronically, please email:  
[christopher.davies@halliwells.com](mailto:christopher.davies@halliwells.com)

If you would like to receive Bulletins on any other areas that may be of interest to you please contact:  
Business Development  
+44 (0)870 365 8000

[www.halliwells.com](http://www.halliwells.com)