

E-ALERT | Employment Law Briefing

October 1, 2012

UK PENSION AND EMPLOYMENT LAW REFORM - 2012 AND BEYOND

Recent announcements by Business Secretary Vince Cable suggest that major employment reforms aimed at encouraging businesses to hire again might be implemented soon. Meantime, with effect from the first of this month, qualifying UK employees are to be automatically enrolled in suitable pension schemes to promote saving for retirement.

This E-Alert discusses the above developments.

PENSIONS

- **Pension Scheme Auto-enrolment.** Qualifying employees will be automatically enrolled in suitable defined contribution or defined benefit schemes, unless they are already active members of a qualifying employer scheme. Importantly, employers must in future make contributions to such schemes. The basic rules are as follows:
 - the employer only has to enroll jobholders who are aged between 22 and the state pension age and earn at least £8,105 per annum (for tax year 2012/13);
 - “staging dates” have been set for compliance, depending on the size of the employer; for example, those with more than 120,000 employees must comply from the earliest date of 1 October 2012; most of those with fewer than 50 will not have to implement the new rules until 1 August 2015;
 - contributions to defined contribution schemes will be phased in over two transitional periods that span six years. Ultimately, from October 2018, employers will be required to contribute 3% of band earnings each year, whilst the jobholder will contribute 5%;
 - the National Employment Savings Trust has been established by the Government to enable employers with no qualifying schemes to meet their statutory auto-enrolment duties;
 - jobholders who are automatically enrolled into the scheme have a statutory right to opt out. However, they will be automatically re-enrolled every three years (so having to re-consider their pension choices periodically);
 - those earning less than the qualifying earning band will still be entitled to join, but they have no right to employer contributions;
 - employers are required to tell jobholders about the scheme; and
 - the Pensions Regulator will deal with compliance. Failure to comply could result in escalating fines and criminal sanctions.

EMPLOYMENT

THE ENTERPRISE AND REGULATORY REFORM BILL

The Enterprise and Regulatory Reform Bill has been the subject of consultation over the last year. Dates for implementation are yet to be announced, but the following proposals are set to become law:

- **Unfair Dismissal Compensation Cap.** The Bill will give the Secretary of State power to lower the statutory limit on the compensatory award in unfair dismissal claims - possibly down to between one and three times' median annual earnings (currently £25,882 - £77,646). This would result in lower pay-outs by employers for unfair dismissal claims.
- **The Use of Settlement Agreements.** The proposed Bill also aims to simplify the process of resolving disputes by allowing employers to have 'protected' discussions with an employee about proposed terms of settlement before any dispute has arisen. Such conversations are not currently legally privileged outside the context of a formal dispute. The Bill will also provide guidance on model settlement agreements.
- **Costs and Financial Penalties for Employers.** The Government suggests increasing the amount that a Tribunal can award in costs from £10,000 to £20,000. The Bill also gives Tribunals the power to impose a financial penalty on employers that lose at a Tribunal - of up to 50% of any financial award, capped at £5,000.

PROPOSALS NOT BEING TAKEN FORWARD

No Fault Dismissal. The Government has confirmed that it will no longer pursue proposals allowing small employers to effect no-fault dismissals. However, the Government has asked the UK Advisory, Conciliation and Arbitration Service to improve the Code of Practice on Disciplinary and Grievance procedures for small businesses and to consider how procedures for poor performance could be better distinguished from procedures for misconduct, while keeping the Code as concise as possible.

NATIONAL MINIMUM WAGE

New rates will apply as of 1 October 2012. The standard adult rate, for workers aged 21 and over will rise to £6.19 per hour. The rate for apprentices will also rise to £2.65 per hour and the accommodation offset will rise to £4.82 per day. However, the development rate and the young worker's rate will remain the same.

FUTURE CHANGES

- **Transfer of Undertakings Rules.** There will now be a period of "policy design", in which the Government will consider a number of suggested ideas including:
 - whether the "service provision change" provisions should be retained or repealed;
 - whether liability for employees should pass entirely to the transferee, as now, or be met jointly and severally by transferee and transferor;
 - whether employee liability information should be provided earlier to the transferee; and
 - whether an amendment to TUPE would be possible to ensure that a change of the employer's location is capable of constituting an "economic, technical or organisational" reason defence to claims of unfair dismissal.
- **Review of Employment Tribunal Rules.** Mr. Justice Underhill has recommended a number of draft proposals, including:

- Presidential Guidance to manage parties' expectations and ensure consistency in case management;
 - a "paper sift" stage, giving judges the power to dismiss weak cases before they reach the Tribunal; and
 - the potential combining of pre-hearing reviews and case management discussions.
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