

# Employment Law

Legal Update: November 2010

You may feel encouraged that you have got to grips with the changes introduced by the Equality Act 2010. However, employment law continues to change. In this Alert we highlight a number of changes in the pipeline: the introduction of the Agency Workers Regulations in October 2011 and the extension of the right to request flexible working which is due to come into force next April and consider a recent Supreme Court case about when a dismissal letter is effective.

## Agency Workers

The Government has confirmed that they will not amend the Agency Worker Regulations 2010 (the Regulations) before they come into force in October 2011. In this Cripps Alert we look at what the Regulations cover and what steps employers should be taking to prepare for the Regulations when they come into effect in 2011.

The Regulations bring the provisions of the Temporary Workers Directive 2008 into UK law. The Directive provides that basic working and employment conditions for temporary workers should be no less favourable than if the person had been recruited direct by the hirer. The TUC and CBI agreed earlier this year that there should be a 12 week qualifying period before agency workers accrue the right to equal working and employment conditions.

Once that 12 week period has elapsed, the agency worker will have the right to no less favourable terms of pay, paid holiday, working hours and overtime, and have the same maternity rights and protection from discrimination as directly employed workers. The Regulations describe an agency worker as someone who finds temporary work through a temporary work agency. It does not include the genuinely self-employed or those employed under a managed service contract.

We recommend that employers should review their use of temporary agency staff to assess the potential impact of the Regulations on their business. This will need to be measured both in terms of the financial cost and the additional administration that will be required. The Government are developing the "best possible guidance" to help businesses to comply with the

Regulations which it is anticipated will be published in draft in early 2011.

## Flexible Working

The Government has announced that the right to request flexible working will be extended to parents with children under 18 from April 2011. According to the Employment Relations Minister, Edward Davey, the new right will benefit an estimated 300,000 people, and help create a fairer, family-friendly society. However, parents of children aged under 17 already have the right to request flexible working and the impact assessment recently undertaken by BIS suggests that this change will have minimum impact. Employers should be aware that this change is due to come into force in April 2011. Flexible working policies should be amended nearer the time.

The Government is also considering extending the right to request flexible working to all employees. It intends to consult on this before the end of the year.

## Dismissal by letter is only effective when the employee reads it

Last month the Supreme Court upheld the Court of Appeal's decision that a dismissal letter sent by an employer was only effective on the date when the employee actually read it. The point arose for decision in the context of whether the Employment Tribunal could hear a claim that it was said was presented out of time. The crucial issue was the date on which the employee was dismissed. If it was the date on which she read the letter dismissing her she had made her claim to the Tribunal in time. In *Gisdada Syf v Barratt* the Supreme Court said that the date of dismissal was the date on which she actually learned of the decision to dismiss her. The Court held that the strict contractual law that the employment contract ends on the date the decision to end it is communicated should be subject to the statutory framework relating to unfair dismissal.

This case makes the important point that it is essential for employers to make sure the employee is actually aware of any decision they may take about ending the employment relationship as soon as possible for until that point the contract remains alive.

The legal position in relation to an employee's resignation is different. A resignation is effective and cannot be withdrawn from the point that the employee communicates their decision to their employer. So for example an employee who sends an email containing their resignation will be treated as having resigned from the moment they pressed "send".

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