

Employment Update

What to expect in 2012

Happy New Year. 2012 looks set to be a busy year for employers and legislators. There are certainly lots of changes in the pipeline; what is not yet clear is how many will materialise in the next 12 months.

1 Increase in compensation limits

From 1 February 2012, the maximum compensatory award for unfair dismissal claims will rise from £68,400 to £72,300. On the same date, the maximum basic award and the maximum amount of statutory redundancy pay will rise from £12,000 to £12,900. A week's pay will rise from £400 to £430.

2 Increase in statutory rates of pay

In April, the weekly rate of statutory maternity, paternity and adoption pay and the rate of maternity allowance will rise from £128.73 to £135.45. The rate of statutory sick pay will rise from £81.60 to £85.85 at the same time.

3 Unfair dismissal qualifying period

As I mentioned in the October Alert, the unfair dismissal qualifying period will rise from one to two years on 6 April 2012. The government still has not released details on how this change will be implemented. There seem to be two options. Either, employees who have not reached their first anniversary of service by 6 April 2012 and all new hires will be subject to the two year limit, but those employees who have secured a year's service before 6 April will be protected by the one year qualifying period. The alternative is that the new provisions will only apply to those employees who start employment after 6 April 2012. The last time the qualifying period was changed from one to two years (in 1985) the new qualifying period only applied to employees who started work after the relevant date.

4 Changes to the tribunal system

In response to the Resolving Workplace Disputes consultation last year, the government announced a number of changes to the way employment tribunals operate. As with the change to the unfair dismissal

qualifying period, these changes are due to come into force in April 2012 but we do not yet have details of the proposed changes. What we do know is that, the government intends to:

4.1 Increase the amount of deposit a tribunal will be able to order a party to pay from £500 to £1,000;

4.2 Increase the amount of costs an employment tribunal can award from £10,000 to £20,000;

4.3 Witness statements will be taken as read unless the judge directs otherwise;

4.4 Tribunals to be given powers to direct parties to bear the costs of witness attendance and state-funded expenses will be withdrawn; and

4.5 Judges will sit alone in unfair dismissal cases.

5 Working time rule changes

The government needs to update the Working Time Regulations to bring them in line with various European decisions. In particular, they are looking at allowing for holiday to be carried forward in limited circumstances and probably for a limited period. It is expected that these changes will take effect in April 2012, but no details are available yet.

6 Other changes in the pipeline

In addition to the changes listed above, the government is also considering implementing the following developments in 2012:

6.1 Penalties for employers who breach employment rights and lose at tribunal. The proposed level of fines is 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 give it a monetary value. The penalty will be reduced by 50% if paid within 21 days. The levy of any penalty will be at the discretion of the tribunal.

6.2 Extending the right to request flexible working to all employees with 26 weeks' service.

6.3 Changes to the drafting of compromise agreements, including the production of a 'standard text and guidance.'

On top of this, the government are consulting on possible changes to numerous other areas of employment law. It is unlikely those changes will come into force in the next year so I will leave them to another Alert.

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