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How much holiday?

Government increases minimum legal holiday entitlement.

From **1 October 2007**, employees working a standard 5-day week must have at least **24** days paid holiday per year (bank and public holidays included). Previously, the minimum entitlement was 20 days. This change is the first of the government's 2-stage plan to increase the minimum holiday entitlement to 28 days. The further increase will not come into effect until 1 April 2009.

What about employees who work a 6-day week? On 1 October, their minimum entitlement increases from 24 to 28 days with no further increase in 2009.

What about carrying leave over? The government only permits this if the employer and the employee consent.

Can payment be made in lieu of holiday? Yes and no. 5-day a week workers can be paid in lieu of their 4 extra days, but only up until 1 April 2009. Otherwise, unless the employment is being terminated, payment in lieu is not allowed.

What about part-time workers? The new changes make it much easier to calculate their holiday entitlement. Just multiply the number of days they work each week by 4.8.

How do you calculate the new entitlement if the holiday year doesn't begin on 1 October? The Government has produced an online interactive calculator on the Business Link web site to help. The tool enables users to calculate the current and new holiday entitlement and how they fit in with the employer's leave year. (Go to www.businesslink.gov.uk and follow the links: Home – employing people – working time and time off – calculate your employees' holiday entitlement.)

Data Protection....again!

Remaining provisions come into force on 24 October 2007.

Manual (non-digitised) filing systems in existence before 24 October 1998 must comply fully with Data Protection law.

From this date, employers must ensure that the way they process personal information is compliant with all the provisions of the Data protection Act. Individuals will have full rights to go to court to rectify any inaccurate information about them that pre-dates 24 October 1998.

The Act does not require that employers digitise or computerise old manual records.

Minimum Wage Increases

From 1 October 2007, the minimum wage will increase as follows:

- 16-17 year old workers **£3.40** (currently £3.30)
- 18 – 21 year old workers **£4.60** (currently £4.45)
(and those aged 22 and over doing accredited training in the first 6 months of employment)
- 22 years plus **£5.52** (currently £5.35)

Agricultural workers minimum pay will have their own minimum pay scale according to their grade. The standard agricultural workers' minimum pay will increase to £6 an hour (currently £5.74)

Office Banter may be Harassment

Employee awarded £1,250 for injury to feelings.

In a recent Employment Tribunal case, an employee of a fried chicken restaurant claimed that a one-off comment made by her boss had caused her great distress.

Background: The employee wanted to know why she could not attend a particular management meeting she would normally be expected to attend. Her boss eventually replied, "maybe it's because I'm being racist to a black woman."

At the tribunal, the manager said his comment was meant 'in jest' and brought up the fact that other members of staff frequently engaged in a high level of racist and sexist banter, including the employee who had made the complaint. The tribunal however decided that the manager's behaviour had been discriminatory and amounted to harassment. '

Why?

- A single incident was sufficient to amount to harassment
- The tribunal felt the comment had not been spoken in jest and had caused real upset to the employee
- It didn't matter that the employee herself had participated in racial banter at work. The manager's behaviour had still been discriminatory.

Tips for Employers

- Train employees about the perils of failing to act swiftly to prevent bullying and harassment
- Ensure there is an up to date harassment policy contained within the Employee Handbook
- Ensure that handbooks are easily accessible (i.e. on the company intranet)

Employers should also note that **1 October 2007** sees the new **Racial and Religious Hatred Act 2006** coming into force. It is a criminal offence for someone to stir up hatred against a person on the grounds of their religion. The punishment is a fine, or a prison sentence of up to 7 years. An act of religious discrimination in the workplace could potentially amount to an offence under the Act. A corporate body could be found guilty of such an offence if it is found to be committed 'with the consent or connivance of a director, manager, secretary or other similar officer.'

Age Discrimination Update

What's happening 1 year on from the introduction of the new age discrimination laws?

Can employers still lawfully retire employees at 65?

Despite the introduction of the new law last year, employers can still compulsorily retire their employees at 65. The Heyday group (from the National Council on Ageing) is challenging the default retirement age by taking their case to the European Court of Justice. Employees reaching retirement age can make a request to their employer in writing to work beyond the proposed retirement date. The employer however is not currently obliged by law to provide a reason to the employee should they refuse the request. The Heyday group considers that this does not properly implement the European law which originally prompted our age discrimination legislation. They have therefore asked the European Court to look into whether our laws are fair. The European Court is not expected to make a decision until 2009, however in the meantime:

- Public sector employers may wish to consider abandoning mandatory retirement unless they can justify each individual retirement dismissal.
- Employees might try to delay claims until the Heyday case has been resolved.

Employee's claim dismissed as written request fails to comply with Regulations

In a recent age discrimination case, an employee did not expressly refer to paragraph 5 of Schedule 6 in his written request to extend his employment beyond retirement. As a result, his claim for unfair dismissal and age discrimination was dismissed - this is despite the fact that the employer failed to follow the set procedure after receiving the employee's written request. The tribunal decided that, because a valid request had not been made, there was no obligation on the employer to follow the procedure.

Paragraph 5 of Schedule 6 of the Regulations stipulates that any request by an employee to continue working beyond the proposed retirement date must be in writing **and** must state that the request is made pursuant to that paragraph.

Without Prejudice?

When are negotiations to settle a dispute really private?

By the time a case reaches the Employment Tribunal or even the Court, an employer and employee may already have attempted to negotiate some sort of private settlement. In certain circumstances, these negotiations are strictly private and may not be disclosed if legal proceedings are commenced at a later date.

In what circumstances might an employer want to ensure this kind of privacy?

Common situations include:

- Where an employer presents an employee with a Compromise Agreement
- When an employer is seeking to settle an employee's potential claims

There has however, been some confusion as to when communications can be said to be 'without prejudice.' Recent case law has provided some clarification on the subject.

The crucial question is: In the course of negotiations, **have the parties contemplated or might they reasonably contemplate litigation if they cannot agree a settlement?** (There is no need for litigation to be threatened or underway for negotiation to be protected.)

How can employers ensure that litigation is being contemplated by both parties?

- At the outset of any discussions, be sure to inform the employee of the potential outcome of the procedure (which may cause an Employment Tribunal dispute) e.g. 'We are contemplating dismissing you' / 'It is likely you will be made redundant.'
- In addition, the employer may agree with the employee to discuss matters on a without prejudice and off the record basis. The employer should explain what 'without prejudice' means.

Dismissed for Smoking?

Employee gets the sack for one-off breach of work's no-smoking policy.

A Tribunal upheld Michelin Tyre PLC's decision to dismiss an employee for smoking at work. It was decided that the personal circumstances of the employee (who had been employed for 12 years) had to be balanced with the employer's interests. The employer's no smoking policy had been put in place to safeguard the business, business property and the lives of other staff members.

"Smoking in unauthorised areas" was specifically listed in the factory's original disciplinary procedure as gross misconduct which could lead to immediate disciplinary action. After the Scottish smoking ban, the company extended its policy on smoking and Michelin decided to ban all smoking in the factory. Staff were informed of the policy changes in various ways, including by powerpoint presentation and notices on notice boards. The employer did create several designated smoking areas across the site and employees were provided with plans of where these were set up.

The employer's interests were held to outweigh those of the employee.

Employers should ensure that their no smoking policies are clear and consistent so as to avoid any kind of confusion amongst employees.

More eligible for Flexible Working

Government extends definition of 'adopter' and 'foster carer'

From 1 October 2007, more employees will be eligible to request to work flexibly. Those who have adopted a child from abroad are now included, as are private foster carers and those who have been granted a residence order in their favour.

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