CHILTERN HR

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1. The right to accompany a pregnant woman to antenatal appointments

From 1 October qualifying employees and agency workers will be entitled to take time off work, unpaid, to accompany a pregnant woman to two antenatal appointments.

An employee or agency worker who wishes to take time off to accompany a woman to an antenatal appointment will be required to comply with certain formalities but only if they are asked to by their employer, temporary work agency or hirer.

If a request is unreasonably refused the employee or agency worker will be entitled to bring a tribunal claim. They will also be protected from being subjected to a detriment for taking time off and if an employee is dismissed and the principal reason for their dismissal is that they took time off to accompany a woman to an antenatal appointment their dismissal will be automatically unfair.

2. Time off to attend adoption appointments

From 5 April 2015 qualifying employees and agency workers who are planning to adopt a child will be entitled to take time off work to attend adoption appointments.

Those adopting a child or children on their own will be entitled to paid time off to attend five appointments. Couples adopting will be able to elect for one of them to take paid time off to attend up to five appointments. The other adopter will only be entitled to take unpaid time off to attend up to two appointments.

An employee or agency worker who wishes to take time off to attend adoption appointments will be required to comply with certain formalities but only if they are asked to by their employer, agency or hirer.

Employees and agency workers who are entitled to take time off to attend adoption appointments will be able to bring a tribunal claim if their employer (in the case of an employee) or the agency or hirer (in the case of an agency worker) unreasonably refused to let them take time off or failed to pay all or part of any amount to which they were entitled when exercising the right to take paid time off.

They will also be protected from being subjected to a detriment as a result of exercising a right in relation to adoption appointments and where the principal reason for dismissing an

employee is that they took time off to attend an adoption appointment their dismissal will be automatically unfair.

3. Severe obesity may amount to a disability

In the opinion of an Advocate General, appointed by the European Court of Justice, severely obese workers may be disabled for the purposes of EU law. His opinion is not legally binding although the Court is expected to follow it.

What does this mean?

Whilst there is nothing prohibiting discrimination simply on grounds of obesity, an obese worker may be disabled if their obesity hinders them from full and effective participation in their professional life on an equal basis with other workers. Whether this is the case will depend upon the severity of the condition and it is only likely that those who have a BMI in excess of 40 will experience such problems. In the Advocate General's opinion the fact that obesity may be self-inflicted is irrelevant.

What should employers do?
Employers who employ severely obese workers should consider making adjustments, for example by providing car parking spaces close to entrances or by providing larger chairs for them.

4. Employee who had a birth defect was disabled

The Employment Appeal Tribunal has held that a tribunal was entitled to conclude that an employee who was born with a disfigurement was disabled.

What does this mean?

Severe disfigurements are a deemed disability for the purposes of the Equality Act. A disfigurement can also amount to a disability if it has a substantial and long-term effect on a person's ability to carry out normal day-to-day activities.

When determining whether a disfigurement is severe or not, a tribunal may take into account medical evidence or, in appropriate cases, the impact of the disfigurement on the employee because, in some cases, that may help in assessing the severity of the disfigurement.

What should employers do?
Employers have a duty to make adjustments for staff who have severe disfigurements. If the severity of a disfigurement is unclear a medical report should be obtained and enquiries should be made to ascertain what impact the disfigurement has on the individual's ability to carry out normal day-to-day activities.

Reference: Hutchison 3G UK Limited v Edwards

5. DWP guidance on employing disabled people and people with health conditions

The Department for Work and Pensions has published guidance for employers on employing disabled people and people with health conditions.

The guidance contains information on what help is available to employers (including funds available to provide adjustments and services which support disabled people to remain in work). It also includes guidance on avoiding discrimination including guidance on dealing with performance issues and how to avoid discrimination during recruitment. The guidance also contains advice on specific conditions.

6. Employer could be bound by contents of HR Consultant's letter

The Employment Appeal Tribunal has held that a Council could be bound by higher than intended rates of pay set out in a letter written by an HR consultant to its employees.

What does this mean?

A third party can create or vary a contract which an employer is bound by if the third party has authority to bind the employer. However, where a mistake has been made such a contract will only be binding if the employees neither recognised nor ought to have recognised the mistake.

What should employers do?

Employers are advised to have in place systems for ensuring that important letters to staff are double checked in order to minimise the risk of mistakes being made.

7. Mandatory retirement age of 65 was justified

The Employment Appeal Tribunal has held that a compulsory retirement age of 65 for partners in a law firm was justified.

What does this mean?

A mandatory retirement age is capable of justification and, therefore, not discriminatory on grounds of age if there are legitimate social policy objectives to justify it. Staff retention, workforce planning and dignity are legitimate aims which could potentially justify a compulsory retirement age. However, the employer would then have to show that a particular chosen retirement age was a proportionate means of achieving those aims.

In this case the chosen retirement age of 65 was held to be proportionate because the partners had consented to the firm's retirement age of 65 when they signed a partnership deed, the now repealed default retirement age of 65 applied at the relevant time, the state pension age at the relevant time was 65 and because the European Court of Justice has upheld a mandatory retirement age of 65 in respect of a variety of different aims.

What should employers do?

Employers should always take specific legal advice before seeking to retire staff.

8. IR35 updated guidance has been published

HMRC has replaced its IR35 FAQs with updated guidance. The IR35 legislation is intended to stop individuals avoiding paying employee income tax and national insurance contributions by supplying their services through an intermediary and paying themselves in dividends. The updated guidance largely follows the IR35 legislation and replicates the previous FAQs. It also refers to the new employment intermediary rules contained in the Finance Bill 2014 and the National Insurance Contributions Act 2014. It explains that Personal Service Companies now fall within the agency legislation and that the agency provisions must be applied in priority to the IR35 rules.

The guidance also explains the risk assessment and contract review process which was introduced in 2012, under which HMRC can review a written contract if certainty as to whether IR35 applies is required.