CHILTERN HR FEBRUARY 2014 NEWSLETTER

110 Butterfield, Great Marlings
Luton ▪ Bedfordshire ▪ LU2 8DL

T: (01582) 439 795
F: (01582) 439 796
E: philip.ivinson@chilternsolicitors.co.uk
www.chilternsolicitors.co.uk

1. Right to request flexible working is to be extended

The right to request flexible working is to be extended to all employees with 26 weeks' service. At present the right to request flexible working only applies to employees who qualify as parents or carers.

It is not yet known when the extension will be implemented. It was planned from 6 April. However, it has been reported that BIS has recently confirmed that it will no longer be possible to implement the extension on 6 April due to delays to the Children and Families Bill.

The requirement that an employer deal with a request in accordance with the statutory procedure is to be replaced with a requirement to 'deal with the application in a reasonable manner'. An employer will be required to notify the employee of its decision within a 'decision period' of three months of the application (or longer if both the employer and employee agree).

The restriction on employees only being able to make one flexible working request in any 12 month period is to be retained.

2. Redundancy selection was unfair

The Employment Appeal Tribunal has ruled that an employee's selection for redundancy was unfair. During the selection process the employee scored one point less than a colleague who had applied for voluntary redundancy which was refused and was made redundant instead. The colleague subsequently resigned.

What does this mean?

The decision to refuse the colleague's voluntary application was one that no reasonable employer would have taken so that the decision to dismiss the employee by way of compulsory redundancy was unreasonable and therefore unfair.

What should employers do?

Employers should consult with their lawyers when selecting staff to be made redundant.

3. NMW penalties are to be increased

The Government has published draft Regulations which will increase the maximum financial penalty for employers who flout National Minimum Wage laws.

The Regulations, which are expected to come into force in February, will increase the maximum financial penalty from £5,000 to £20,000.

Currently employers that break NMW law can be given a financial penalty calculated as 50% of the total underpayment for all workers found to be underpaid, subject to a maximum penalty of £5,000.

The Regulations increase the financial penalty percentage from 50% to 100% of the unpaid wages owed to workers and increases the maximum penalty to £20,000.

The Government has also announced that it intends to introduce legislation as soon as possible so that the maximum £20,000 penalty can apply in respect of each underpaid worker.

4. Belief in 'democratic socialism' was a philosophical belief for discrimination purposes

A Labour party activist's belief in 'democratic socialism' has been held by a tribunal to amount to a philosophical belief for the purpose of bringing a discrimination claim.

What does this mean?

Mere support of a political party is unlikely to be enough to protect someone. However, a belief in 'democratic socialism', as enshrined by the Labour Party's core values may qualify as a philosophical belief under the Equality Act 2010.

The tribunal said that what was important was the fact that the employee's belief was a belief, rather than merely an opinion or view point, that the employee genuinely held his belief, the belief was a belief as to a weighty and substantial aspect of human life and behaviour, had attained a certain level of cogency, seriousness, cohesion and importance, was worthy of respect in a democratic society, was not incompatible with human dignity and did not conflict with the fundamental rights of others.

It is important to note that this was a tribunal decision and, therefore, other tribunals are not bound by it.

What should employers do?

Employers should take specific legal advice whenever a complaint of discrimination is raised.

5. The law on TUPE has changed

The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 came into force on 31 January.

The new Regulations make a number of changes to the existing law on TUPE transfers. The main ones are as follows:

- Clarifying the test for service provision changes – the activities carried out after the change in provider must be fundamentally the same as those carried out by the person who has ceased to carry them out before the transfer;
- Amending the provisions which give protection against dismissal and restrict changes to contracts – these protections will apply where the sole or principal reason for the dismissal or variation of an employment contract is the transfer. However, the protections will not apply in certain circumstances where the sole or principal reason for the dismissal or variation is an economic, technical or organisational reason entailing changes in the workforce;
- Amendments so that a change to the place where employees are employed can be within 'changes in the workforce'. This is relevant to the dismissal protection and the protection against variations of contracts;
- Introducing exceptions to the general restriction on varying contracts of employment so that terms incorporated from collective agreements can be varied when more than a year has passed since the transfer, provided that overall, the contract is no less favourable to the employee and so that employers can make changes permitted by the terms of the contract. This is, however, subject to the rules as to when a contract is effectively varied.
- Introducing a provision so that in some circumstances, rights to terms and conditions provided for in collective agreements entered into after the date of the transfer are not transferred;
- Introducing a provision allowing micro businesses to inform and consult employees directly when there are existing appropriate representatives;
- Increasing the deadline by which the old employer must supply the employee liability information to the new employer from not less than 14 days before the transfer to not less than 28 days before the transfer;
- Amending the Trade Union and Labour Relations (Consolidation) Act 1992 so that a transferee may elect to consult (or start to consult) representatives of transferring staff about proposed collective redundancies prior to the transfer (to meet the requirements for such consultation under that Act). The transferor must agree to such consultation.

These amendments will only apply to transfers which take place after 30 January.

6. Bulgarian and Romanian nationals

From 1 January 2014 Bulgarian and Romanian nationals who wish to work in the UK no longer need to obtain prior authorisation from the Home Office in order to do so.

<u>What does this mean?</u>

They no longer need an accession worker card as evidence of permission to work in the UK. Applications made before 1 January for an accession worker card will now be withdrawn and all documents returned to the applicant.

7. Asking and responding to questions of discrimination

ACAS has published good practice guidance on asking and responding to questions of discrimination in the workplace.

The guidance is aimed at job applicants, employees, employers and others asking questions about discrimination related to the Equality Act 2000.

The guidance recommends that individuals take the following steps when asking questions:

- Provide their and the responder's details.
- Identify upon which protected characteristic(s) they believe the discriminatory treatment was based.
- Set out a brief factual description of the discriminatory treatment, giving key factual details, such as the date, time, place and number of instances of the discriminatory treatment and name any other individuals involved.
- Describe the type of discrimination experienced (e.g. direct or indirect discrimination, harassment etc.).
- Set out why they think the treatment described might be unlawful.
- Ask any additional questions about treatment that they consider might be important to the events they feel have affected them.

The guidance recommends that employers respond by following these steps:

- Confirm whether they agree, agree in part or disagree with the questioner's description of the allegedly discriminatory treatment described by the questioner.
- Confirm whether they consider the treatment was justified (in the case of indirect discrimination or direct age discrimination only).
- Respond to the questioner's other questions. If a responder thinks some other questions are not relevant or unclear, they should clarify their purpose with the questioner to help them to reply appropriately. If a responder decides not to answer a question, they should explain why.

The guidance also contains specific guidance relating to equal pay questions.