



Newsletter – May 2010

New Government - First Equality Policy Announcement – Retirement Age of 65 to go. State Retirement Age to go up.

Britain's first coalition government since the Second World War lost no time amongst the various announcements about the economy and proportional representation agreements to make its mark on a pressing equality issue – the default retirement age of 65 and the state retirement age. In a joint statement the new Prime Minister Mr Cameron and his deputy Mr Clegg said:-

“The parties agree to phase out the default retirement age (DRA) of 65 and hold a review to set the date at which the state pension age starts to rise to 66, although it will not be sooner than 2016 for men and 2020 for women.”

These brief words will have a massive impact on employers and the state once people leave the world of work. By 2020 one third of the UK workforce will be over the age of 50. Paradoxically, each year from now until 2015 the country faces the prospect of 250,000 less school leavers being available for the world of work.

Currently the DRA enables employers to force staff to retire at 65 and there is much debate about whether this should be raised to 70 or scrapped altogether. The timing of this reform, and whether there should be any phasing in period, is going to be hotly debated. Most controversial of all, is whether removing the current DRA should be accompanied by other legal changes, for example, should workers have a statutory right to ask to work part-time or for an easier job as they get older? Or should unfair dismissal laws be amended to relieve employers' worries about not being able to dismiss employees whose energy or ability is declining through age?

Equality Act 2010 –The Latest

As we went to press, the fine details of Mr Cameron's agreement with the Liberal Democrats were still filtering through. The Queen's Speech and subsequent debates later in May will provide some further flesh on the bones in terms of what will and what will not be taken forward in the Equality Act 2010 passed by the last government and parliament. It is already clear there will be no changes to:-

- Requirement to have Single Equality Schemes and Impact Assessments
- Public Procurement and Equality Contract Compliance for the private sector when seeking public contracts
- The implementation date of October 2010
- The extension of Associated Discrimination to all the diversity strands
- The tidying up clauses bringing the existing equality laws together

But there will be debates and decisions not only about the State Retirement Age and Default Retirement Age (see above) but also:-



- Conservative objections to equal pay audit measures and Liberal Democrat support for them
- The socio economic duty
- The “tie breaker” for interview panels – discretion for positive discrimination
- Various draft codes of practice around issues such as whether vegetarians should be included within the Religion and Belief regulations

Against this backdrop, the coalition parties are agreed that:-

- There will be a cap on immigration numbers through an amendment to the Asylum and Immigration Act
- The welfare to work reforms impacting on incapacity claimants and those receiving job seeker’s allowance allied to citizenship requirements for people of this country will continue apace and speedily
- There will be no Conservative attempts to jettison the Human Rights Act and correspondingly no Liberal Democrat attempt to campaign for entry into the Euro or seeking to have further UK legal powers ceded to Brussels during the lifetime of this new parliament.
- A relaxation of the Working Time Directive

World Cup Staff Absences – Guidance for Employers

In an innovative and perhaps ground breaking manner, the Chartered Institute of Personnel and Development (CIPD) have produced research which says that nine out of ten employers have no plans to help manage staff absences during the forthcoming World Cup. Their poll of more than 1,000 employers shows that almost all (90%) organisations have not developed a policy to manage staff absence during the World Cup. Just 5% of organisations have developed a policy while a further 5% are currently developing one. So the Institute has produced a free guide on managing staff absences during the World Cup. The guide includes advice on:-

- Flexible working hours;
- Shift swaps;
- Unpaid leave; and
- Special screening of matches on premises.

The guide also advises employers to make organisational policy clear on absence, whether alcohol-related or not. Employers should make clear to workers that there are disciplinary consequences for taking unauthorised time off without good reason or for not performing satisfactorily or misbehaving at work. The CIPD suggests employers should encourage workers to use annual leave, particularly to discourage general absenteeism and poor performance through over-indulging in alcohol.

Massive increase in fines on employers for taking on illegal workers

The number of companies having to pay large fines for employing those who do not have permission to work in the UK has risen very dramatically in the past year. The figures released from the UK Border Agency show that £22.1 million was paid to the agency in 2009. This is a clear signal that there has been a rise in the number of businesses having to pay the fine of £10,000 per illegal worker since the introduction of the scheme in 2008. In order to avoid a fine, it is critical to ensure



that the correct document checking procedures are in place. As well as checking documents at the recruitment stage, it is vital to carry out annual checks since it is possible that an employee's right to work in the UK will change or alter during the course of their employment. Admittedly, it can be very difficult to maintain up to date records of an employee's right to work in the UK, but a failure to do so will expose a business to these large fines.

And now £500,000 fine faces those who break Data Protection Laws

Introduced on 6th April 2010, the Information Commissioner now has the power to issue fines of up to £500,000 for serious breaches of data protection laws. The fines can be issued where there has been a serious breach of data protection principles, or the breach was of a kind likely to cause substantial damage or distress, and it was either deliberate or the organisation knew there was a risk but failed to prevent it. Employers therefore need to ensure that they take steps to protect the data they hold regarding their employees.

Baby Oliver Case Settled for £12,000

In previous editions we have reported on this important case. It was settled three weeks ago for what many are saying was a derisory amount of money. The case centred on whether the Disability Discrimination Act provides protection for people who are not themselves disabled but are associated with disabled people. Mrs. Coleman is not disabled, but has a disabled son. She tried to take time off to care for him, but alleged she was subjected to hostile treatment by her employer, a London law firm. She alleged that her employer branded her as 'lazy' said she was using her child to manipulate her working conditions, and refused to give her the same working flexibility as colleagues with non-disabled children. She claimed disability discrimination on the basis that she was associated with a disabled person (her son). In 2008, the European Court confirmed that Mrs. Coleman's situation was covered by a European Directive and a UK Employment Appeal Tribunal eventually upheld that the legal secretary had been discriminated against by her employer. The Advocate-General agreed with Mrs. Coleman. He said that what is important is that disability (in this case, the disability of her son) was used as the reason for her treatment – it is not necessary for the person who is the object of the discrimination to suffer the disability themselves. The case was then taken to the Court of Appeal but has just now been settled out of court for £12,000. Discrimination by Association is, of course, written into the new Equality Act.