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Rightfocus

Focussing on legal issues important to you

Retirement age abolition – managing the business impact

Following the abolition of the so-called 'default retirement age' (DRA), any employer who still gives an employee aged 65 or over six-months' notice of their intention to terminate employment on the grounds of age will be running the risk of receiving a claim for unfair dismissal.

This is because it is now just over six months until 30 September 2011, which has been confirmed by the Government as the last day on which an employer will be able to require an employee to retire at the age of 65 without facing such a risk.

While this is a major change – positioned by employment relations minister Ed Davey as “great news for older people, great news for business and great news for the economy” – in fact some two-thirds of businesses already allowed people to continue working beyond 65.

What it will provide, however, is the right for all people who wish to continue working into their late 60s, 70s and even beyond not to be forced into retirement against their wishes. This is regarded by supporters as particularly important in a society where people are living longer and healthier lives.

While the move has been greeted by many with great enthusiasm, among them naturally the Department for Business Innovation and Skills which said “the freedom to work for longer will provide a boost to the UK economy”, many business leaders were less convinced.

Among these was John Cridland, the incoming Director General of the Confederation of British Industry (CBI), whose greatest concern involved how a business could retire employees who were no longer capable of doing their jobs. As he said: “There is not enough clarity for employers to deal with difficult questions on performance. The outcome will be more unpleasant and could involve costly legal action.”

There is also a concern that open discussion of retirement age with employees may provoke age discrimination claims, and that there will be serious difficulties in cases where there is disagreement over an employee's fitness to work.

The CBI wishes to see greater simplification of the rules in this area, so that employees will not need to suffer “demeaning” reviews when there is a suspicion that age is causing a decline in performance. Ed Davey, on the other hand, said: “The evidence that performance and effectiveness decline after 65 is just not there.”

Anybody wishing to discuss the legal implications of this change in the law should contact one of our employment solicitors for advice on developing new policies and procedures.

Clear Advice: Plain English

The Employment team advise on all aspects of the employment relationship, including the rights, obligations and remedies available to both employers and employees. The range of matters the team can offer advice on include the employment contract and associated policies/procedures, discrimination, maternity and other family friendly rights, dismissals and transfer of undertakings.

The Company Commercial team concentrate on giving pragmatic, practical and competitively priced legal advice to medium sized businesses and institutional clients. The team advises on all legal aspects of business and company acquisitions and disposals including raising of corporate finance, shareholder's agreements, share issues, takeovers and mergers.

The Commercial Landlord and Tenant team advise in relation to both contentious and non-contentious areas. The team has a heavy emphasis on industrial, office, retail and leisure premises. The range of services the team can advise on include taking, granting and renewals of leases, Landlords Consent Licenses and recovery of rent arrears and repossession of premises.

The Commercial Property team offers a full range of legal services to buyers, developers and lenders. The team offers a complete range of expertise reacting quickly to clients' requirements with practical and cost-effective advice. The team can advise on acquisitions, disposals and leasing of commercial, industrial and retail properties, planning applications, appeals and enquiries.

The Commercial Litigation team advise on commercial contractual problems, disputes, commercial debt recovery, employers liability including Health and Safety at Work disputes.

The Insolvency and Restructuring team deals with all aspects of insolvency such as liquidations, administrations, receiverships, voluntary arrangements, corporate restructuring, bankruptcy and asset recovery.



Are we moving towards flexible working for all?

This April sees the introduction of a new right for parents of children aged under 18 to request flexible working rights from their employers – a move towards an extension of flexible working rights to all employees, which is likely to come into force in April next year.

Until April's change, the right was available to the parents of children aged up to 17 (or 18 only if the child had a disability).

It neatly coincided with a recent report from Orange, which says that 74% of all UK SMEs are planning or considering the introduction of flexible working options this year. A majority of these said that improved staff efficiency was a main driver of change.

While this suggests that the flexible working battle may have already been won, it is important that businesses adapt some of their practices to embrace the new legislation. It is recommended that they consider how this change might impact on other practices and policies and ensure that all employees with responsibility for staff working hours are fully aware of the change.

Anybody who needs to know more about flexible working in practice or wishes to introduce a flexible working policy to their business is advised to seek the help and advice of our solicitors.



Every business needs an anti-corruption programme

Four new offences and a more effective anti-bribery framework are to be the main features of the new Bribery Act 2010, which comes into force later this year and covers organisations in both the public and private sectors.

The Act represents a major move away from the current fragmented laws covering bribery and corruption, and places obligations on organisations to have strong anti-corruption procedures in place. Having adequate procedures means that companies could escape liability for the potentially corrupt activities of its employees.

The new offences involve two concerning the payment and receipt of bribes, covering promising, offering, agreeing to or requesting them. There is also a separate offence of bribing foreign officials, and corporate offence of failing to prevent bribery.

As well as setting up a full anti-corruption programme and addressing their corporate governance, risk management, procurement and other procedures, organisations will also need to create a whistle-blowing resource, gifts and a hospitality policy and register.

This is an important and wide-ranging new piece of legislation with very serious implications for organisations of all types, meaning that owners, directors and senior managers need to be familiar with its demands and implications. Seek advice from one of our commercial solicitors if you are unsure how to proceed.

HMRC is poised to punish poor record-keepers

Under a planned clamp-down by HMRC, over two million SMEs suspected of poor record-keeping face investigation in 2011 and the years to come.

These comprise the 40% of all UK small businesses that HMRC believes may owe unpaid tax due to book-keeping failures. It is expected that some 50,000 will face investigation in 2011, and that penalties will be imposed for significant failures.

One of the biggest concerns facing such businesses is that they might face penalties under several different kinds of tax, such as income tax, PAYE, VAT, CGT and more, each of which has a separate set of penalties.

While HMRC has no clear definition of what constitutes poor book-keeping, it has said that inspectors are expected to look for 'untidy and unanalysed' records, such as boxes stuffed with invoices, bank statements and cheque stubs, signs of irregular updates and significant numbers of 'round' sums.

Being investigated can be a highly stressful and costly experience; insurance is available to cover the associated costs, but it is clearly advantageous not to be a candidate for investigation in the first place. If you are being or about to be investigated, it is advisable to talk to one of our solicitors to gain an understanding of your rights if a penalty is imposed.

Proposed pay rate for interns is criticised

Internships, those often unpaid positions taken usually by young people to gain experience of a particular business, industry or profession, have been the subject of controversy for some time.

Regarded by some as excellent CV fodder, and by others as nothing short of exploitation, they are now the cause of disagreement between the TUC and the Chartered Institute of Personnel and Development (CIPD).

Earlier this year, as part of its 'Blueprint for Growth' report the CIPD proposed a £2.50-an-hour training wage for internships that last three months or longer. The TUC, however, responded by saying that the idea would not work and is not the way forward.

According to TUC General Secretary Brendan Barber: "This proposal would allow unscrupulous employers to ignore the National Minimum Wage (NMW), since the concept of internships is not defined in law. The idea of a minimum wage rate for training has already been tried and it failed. In 2006, the Government abolished the NMW 'development rate' after it was found to have been widely abused."

If you need clarification on the legal status of internships and how they relate to the National Minimum Wage, seek the advice of our solicitors specialising in employment law.

Too many businesses are still failing on Data and Internet security

It is widely recognised that a failure to ensure the security of a company's IT systems, including restrictions on staff Internet access, effective data management and protection against viruses and cyber attacks, can expose them to two significant areas of risk.

First, there is the danger that they might be open to legal action due to inappropriate surfing by colleagues or breaches of the Data Protection Act. Second, there is the constant danger of damage to their business resulting from an external online attack by viruses, denial of service incidents and other Internet-born threats.

Despite this, software security firm AVG has found that more than half of all UK small firms fail to implement IT usage guidelines for staff, and one in seven have no security software in place.

As AVG spokesman Robert Corby says: "Small businesses have a fundamental understanding that Internet security threats can be a hazard to their businesses. But they obviously lack the time or the resources to adequately protect themselves from cyber criminals who may try to steal valuable company information."

If you are not satisfied that your business has the right IT or data usage guidelines in place, or is failing to implement them, talk to one of our lawyers with specialist data protection and management expertise.

Don't forget the redundancy survivors

Many businesses have been forced to make redundancies over the last two years, and more will probably have to in the months to come – particularly those that depend on the public sector for a significant proportion of their income.

It is too easy to forget about the psychological state of the employees who are retained, many of whom have been identified in a recent American study as suffering from the so-called 'survivor syndrome'. This can result in feelings of guilt and low morale that impact on loyalty, trust and productivity.

There are, however, some proven actions that managers can take to minimise damage before, during and after the redundancy round.

First, communicate – if you provide people with information about the reasons that make redundancies inevitable, and the actions taken to prevent them, it is less likely that they will see any layoffs as unfair.

Set a positive tone – it's likely that you too will regret the departure of colleagues, but do your best to focus your employees' minds on the better future that is ahead of them.

Help people progress – provide training and career counselling for those who are keen to get on in their careers, and show that they will be able to grasp future opportunities.

If you need guidance and support in handling a redundancy round, make sure you talk our specialist solicitors.



Metcalfes Solicitors

**Readers are plentiful,
thinkers are rare**

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The salesperson who sold too much

A recent case has highlighted the importance of ensuring that clauses in employee contracts relating to bonus schemes should be very carefully and tightly worded.

The employer in question wished to incentivise a recently hired salesperson, so offered bonuses for meeting a range of sales targets. Her performance, however, was quite exceptional – so exceptional that she ended up being owed over £100,000.

This was even though the contract included a clause enabling the employer to limit bonuses paid during the year. This was not used, however, and the employee refused an offer of a bonus worth 130% of her annual salary. And when the case reached the Court of Appeal, it was felt that only a better worded capping clause should prevent the full payment from being made, and the salesperson won her case.

This is one of those 'if only' stories, where the employer will continually regret having neither tightened the capping clause nor invoked the one limiting bonuses paid. To ensure that your business never falls into similar traps, ensure that a specialist solicitor is involved in creating the appropriate clauses, and ascertain that your processes are sufficiently robust to take appropriate action when it is needed.

Busting the bank holiday myths

While it is a myth that employees are automatically entitled to a day off on a bank holiday, employers are required by law to give full-time workers the minimum annual leave as laid down in the Working Time Regulations (1998).

This stands at 28 days, including bank holidays – so for many, this year's additional 'holiday' marking the royal wedding does not necessarily mean that they will get more time off.

If however a contract of employment stipulates "20 days' holiday plus bank holidays", then a worker will be entitled to the additional day over and above the standard number of eight UK bank holidays. Employers whose contracts simply give an entitlement of "28 days holiday per year" may well close down on the day itself, yet still require employees to take the day out of their annual allowance.

While many business owners bemoan the lost opportunity for trading that a bank holiday means – the Department of Business, Innovation and Skills estimates the loss to the British economy of the extra day at around £2.9 billion – they can console themselves that they are not operating in France (11 national holidays and five weeks' paid vacation) or Spain (16 national holidays, plus regional holidays on top).