



## EMPLOYMENT LAW UPDATE – JANUARY 2009

<b><u>THE REPEAL OF THE STATUTORY DISPUTE RESOLUTION PROCEDURES</u></b>	
	<p>The Statutory Dispute Resolution Procedures will be repealed on 6 April 2009 and replaced by a new ACAS Code of Practice. An unreasonable failure by either the employer or employee to follow the Code will result in a Tribunal having the power to increase awards by up to 25%.</p> <p>Your existing procedures may need to be revised following this change.</p>
<b><u>HOLIDAY PAY FOR LONG TERM SICK WORKERS</u></b>	
	<p>For some time employers have had to wrestle with the issue of whether workers can accrue and take paid holiday whilst absent on long term sick leave. The European Court of Justice (ECJ) has now handed down judgment in the case of <b><u>Stringer v HMRC</u></b>.</p> <p>In summary, the Court has decided that a worker who is on sick leave for the entire holiday year is entitled to receive payment for their statutory holiday entitlement despite the fact that they have not actually been at work. Following this ruling national Courts can now decide whether paid leave can be taken during the period of sickness or whether it should be carried over to the next holiday year. In any event employees are entitled to be paid at some point.</p> <p>This is unlikely to be a popular decision for employers who may now be looking at ways to lessen the impact of the decision.</p>
<b><u>EQUALITY BILL</u></b>	
	<p>The aim of the Equality Bill which is expected to pass into law in October 2009 is to promote equality, end discrimination and introduce pay transparency into the workplace in order to help address the difference</p>

	<p>in pay between men and women.</p> <p>The Government is preparing amendments to the bill which could compel companies to publish statistics detailing the numbers of men and women on different pay grades.</p> <p>The Government is also considering requiring private sector employers to disclose gender pay information in their annual accounts and a ban on secrecy clauses which prevent employees discussing their own pay. This could result in an increase in equal pay claims within this sector.</p> <p>Finally, the bill aims to extend age discrimination laws to cover discrimination in the provision of goods, facilities and services.</p>
<b><u>FLEXIBLE WORKING</u></b>	
	<p>The right to request flexible working will be extended to parents of children aged up to 16 from 6 April 2009.</p>
<b><u>STATUTORY MATERNITY/PATERNITY AND ADOPTION LEAVE PAY</u></b>	
	<p>These are to be increased from 5th April 2009 from £117.18 per week to £123.06 per week.</p>
<b><u>STATUTORY SICK PAY</u></b>	
	<p>Statutory Sick Pay will increase from £75.40 to £79.15 per week from 6<sup>th</sup> April 2009.</p>
<b><u>STATUTORY HOLIDAY ENTITLEMENT</u></b>	
	<p>This will increase from 4.8 weeks to 5.6 weeks from 1<sup>st</sup> April 2009.</p>
<b><u>HOMOPHOBIC BANTER</u></b>	
	<p>A recent ruling from the Court of Appeal in the case of <b><u>English v Thomas Sanderson Ltd</u></b> held that homophobic banter even if aimed at someone who is not gay and is known not to be gay by those making the comments is still likely to be held to be discrimination on the grounds of sexual orientation and therefore unlawful.</p>
<b><u>INCREASE IN TRIBUNAL AWARDS</u></b>	

	<p>From 1<sup>st</sup> February 2009 the amount of compensation that can be awarded by an Employment Tribunal will increase. In particular the maximum compensation for unfair dismissal will rise from £63,000 to £66,200. The maximum statutory redundancy payment will increase from £9,900 to £10,500 and the maximum amount of a week's pay for calculating redundancy awards and the basic award in unfair dismissal claims will rise from £330 to £350.</p>
<p><b><u>REDUNDANCY SPOTLIGHT</u></b></p>	
	<p>With an increase in the number of redundancies taking place employers should review their procedures in order to limit their exposure to unfair dismissal claims. Below are some pointers that employers should have regard to in the event that they are contemplating making at least 20 employees redundant.</p>
*	<p>Where 20 or more redundancies are contemplated information and consultation procedures should be triggered. Consultation should cover both the procedure which will be used and also the reasons why there is a risk of redundancies.</p>
*	<p>There is a requirement to consult with elected employee representatives or Trade Union representatives</p>
*	<p>The employer should count volunteers for redundancy as well as those who are compulsorily selected as different numbers trigger different legal requirements.</p>
*	<p>The statutory disciplinary and dismissal procedure does not apply if it is contemplated that 20 or more employees may be made redundant. However, a fair procedure should still be used. After 6 April 2009 when the statutory procedures are repealed and replaced by the ACAS Code, which does not apply in redundancy cases, a fair procedure should still be used and the requirements of the TULRC Act 1992 adhered to.</p>
*	<p>If the employer provides discretionary enhanced redundancy payments such a practice may have become a contractual right and any attempt to deviate from this could result in a claim for breach of contract.</p>
*	<p>The employer should examine their redundancy procedure/policy in order to ensure that it is not in breach of discrimination laws. In particular, the employer should be aware that enhanced severance terms based on length of service may be in breach of age and sex discrimination laws.</p>
*	<p>The employer should not forget that women on maternity leave receive preferential treatment as candidates for suitable alternative employment</p>
*	<p>The employer will also have to individually consult employees as</p>

		a collective consultation will not be deemed to be sufficient by an Employment Tribunal and is likely to lead to claims for unfair dismissal.
	<b><u>TRAINING/INFORMATION SEMINARS</u></b>	
	If you are require further information in relation to any of the above matters or are interested in attending training/information seminars run by a specialist employment Solicitor please contact Marlene Hession directly on 0161 828 1560 or <a href="mailto:marlene.hession@fdl-law.co.uk">marlene.hession@fdl-law.co.uk</a> .	