

## Employment Update January 2010

### The compensatory award for unfair dismissal

The annual change in statutory rates and compensation limits takes effect on 1 February and this year results in a reduction! The limit on the compensatory award for unfair dismissal decreases from £66,200 to £65,300. The new limits will be applicable where the **event that gives rise to the award or payment occurs on or after 1 February 2010.**

The rate is set taking into account the Retail Price Index (RPI) for September and between September 2008 and September 2009 there was a 1.4% decrease in the RPI. There will be no change to the maximum amount of a week's pay which is used to calculate statutory redundancy pay and the basic award for unfair dismissal. This will remain at £380 a week.

### Increase in statutory payments from April 2010

The rate of statutory maternity, adoption and paternity pay will increase from £123.06 to £124.88 a week on 4 April 2010. The lower earnings limit will increase from £95 to £97.

Statutory sick pay, which normally increases on 6 April, will continue at the rate of £79.15 per week in 2010. The lower earnings limit will increase from £95 to £97.

### The Equality Bill

The Equality Bill is expected to receive Royal Assent in spring 2010. The purpose of the Bill is to simplify current discrimination law and to introduce new measures to tackle discrimination and inequality. Many of the provisions of the Bill are expected to come into force in October 2010.



### The right to request time off for study or training

A right to request time off to undertake training is to be introduced on 6 April 2010. This has received very little publicity even though it is estimated that around 11 million people will benefit from the new right. The Government intends to introduce the right for employees in organisations with 250 or more employees from April 2010, extending the right to cover all employees from April 2011 at the earliest.

The new right, which will be modelled on the right to request flexible working, will be available to employees who have been continuously employed for at least 26 weeks. The employee's request can only be made if the purpose of the study or training is to improve:

- the employee's effectiveness in the employer's business and
- the performance of the employer's business

Employees may, for example, request to undertake higher education; to participate in a qualification bearing programme such as the National Vocational Qualification; or to address a particular skills need. Employees will be permitted to make one request in any 12-month period.

Employers will be obliged to consider seriously requests that they receive, but will be able to refuse requests where there is a good business reason for doing so. There will be a number of specified business grounds for refusing the request (similar to flexible working) including for example, the detrimental effect on ability to meet customer demand and detrimental impact on quality and performance. It will be up to the employee and employer to agree how much time may be taken but this is likely to be a key consideration for the employer. If the request for time off is granted, **the employer will not be obliged to pay the employee's salary whilst off work nor is there any obligation to pay for the training.**

However, employees may be entitled to government funding through the government skills service Train to Gain. In the current economic climate the number of requests for time off may be relatively low initially. Even so, employers need to put in place a policy for managing request for time off for study and training.

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## The right to additional paternity leave

In September 2009, the Government confirmed that it intends to go ahead with plans to allow fathers to benefit from up to six months' additional paternity leave if the mother returns to work before using her full entitlement to statutory maternity leave. It is anticipated that legislation will be implemented in April 2010, and the new right will be available to parents of children due on or after 3 April 2011.

At present an employee who has been continuously employed for 26 or more weeks by the end of the 15th week before the child's expected week of birth has the right to take either one or two consecutive weeks' paternity leave. Such leave must be taken for the purposes of caring for the child or supporting the child's mother and must generally be taken within 56 days of the date on which the child is born. This period of leave will be re-named Ordinary Paternity Leave.



The new right will allow employees to take up to 26 weeks' additional paternity leave within the child's first year. In normal circumstances, additional paternity leave will be available during the second six months of the child's life - the first six months will be preserved for the mother to take maternity leave. The earliest that leave may commence will be 20 weeks after the child is born.

If the mother returns to work after 26 weeks' maternity leave but before she has taken her full entitlement to 39 weeks' statutory maternity pay or maternity allowance, the additional paternity leave will be paid at the same rate as the standard rate of statutory maternity pay or 90% of the father's average earnings if this is less than the standard rate. Therefore, fathers will be able to take a maximum of 13 weeks' paid and 13 weeks' unpaid leave.

A father taking additional paternity leave will be entitled to take up to 10 keeping-in-touch days during the course of that leave without bringing it to an end. He will also, following a single period of additional paternity leave of 26 weeks or less, have the right to return to the same job that he was employed in before his absence.

Additional paternity leave and pay will also be available to adopters and they will have the same enhanced rights as biological fathers. The mother's husband, partner or civil partner will also enjoy the same rights as long as he (or she) expects to have the main responsibility (apart from any responsibility of the mother) for the child's upbringing.

The Government originally stated that the introduction of additional paternity leave and pay would coincide with the extension of statutory maternity pay, statutory adoption pay and maternity allowance to 52 weeks. However, it has not announced a date for extending maternity rights.

## Changes to the 'sick note'

There will be a change to the format and content of the Medical Statement used by GPs relating to an individual's fitness to work from 6 April 2010.

GPs will be able to record whether a patient is fit or not fit for work but also a new option to indicate where someone may be fit for some work now. This option is to be used where the GP considers that the individual could return to work if some aspects of the work were changed either temporarily or permanently. For example:

- a phased return to work
- altered hours
- amended duties
- workplace adaptations

Any changes to workplace or role changes must be with the employer's agreement.

## Sickness and Holidays

One of the most challenging areas for employers is managing long-term sickness absence and the issues arising out of the accrual of statutory annual leave whilst off sick.

This was the matter in dispute in the long running litigation *Stringer v HMRC*. The current difficulty is reconciling the decision in *Stringer* with the Working Time Regulations 1998. It is likely that the Regulations will need to be amended or for the government guidance on the Regulations to be changed. At the present the government has made no announcement about this but further developments are likely in 2010.

No doubt at the same time, the government will also look at the issue of re-arranging annual leave if an employee is taken ill or is injured before going on pre-arranged leave which was the issue arising in the *Pereda* case.

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## Default Retirement date

The government has brought forward its review of the default retirement age of 65 from 2011 to 2010 to "meet the challenges and opportunities of our ageing society". It is currently undertaking a major research project on the issue and seeking evidence of how the mandatory retirement age works in practice and the experiences of those organisations that do not have a retirement age at all.

If, following its review, the Government decides that the default retirement age is not necessary, the earliest that changes will be made is 2011 but will it be increased to a higher age or removed completely?

## Pensions Reform

The Pensions Act 2008 introduced major changes intended to encourage greater pensions savings. The Department for Work and Pensions has now published papers setting out draft regulations and guidance that bring the reforms closer.



The Government has published its final consultation on employers' auto-enrolment duty together with its responses to previous consultations on the duty and the delegation of the Pensions Regulator's powers.

In response to pressure, it has extended the time period over which employers must complete enrolment and opt-out procedures.

The government has also extended the period over which it is phasing in the new duty to three years and announced that the full compulsory contribution will not fully take effect until 2016.

The reforms are due to take effect in October 2012. However, there are transitional arrangements to help "support smooth delivery" of the reforms.

Contributions will be phased in for employers and employees starting at 1% and increasing gradually to the minimum level to help employers and employees adjust to the cost. Employers will have to contribute a minimum of 3% on band earnings and the total minimum contribution for eligible workers must be 8% of the band of earnings (made up of employer contributions, worker contributions and tax relief)

The final details of the staging powers have yet to be announced but at present the government intends splitting employers into groups, depending on size, and requiring each group, starting with the largest employers, to begin automatic enrolment on an assigned date over the three years commencing October 2012.

The Pensions Act places a duty on employers to auto-enrol jobholders in a pension scheme before they can opt out. The employers' duty to auto-enrol does not extend to jobholders aged between 16 and 22 and those over state pension age, or to individuals earning less than £5,035 a year. However, employers will be required to tell workers who are not covered by the auto-enrolment duty on the grounds of age that they can opt in to the auto-enrolment scheme. They will then be eligible for an employer contribution. Employers must also inform low earners that they have a right to join a pension scheme, but this group is not entitled to compulsory employer contributions.

The Pensions Act says that employers periodically have to re-enrol jobholders who have stopped saving for pensions either during or after the opt-out period. The process for re-enrolment will be similar to the enrolment procedure and has to be repeated every three years while the individual continues to work for the same employer.

We can offer help and advice on any of these or other topics. Please contact Sue Ferguson on 0800 955 4818 or 07889 607169 or email [sueferguson@optionshr.co.uk](mailto:sueferguson@optionshr.co.uk)

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