



EMPLOYMENT LAW UPDATE – SUMMER 2008

Are you ready for the changes to the Sex Discrimination Act?

The Government has been required to amend the Sex Discrimination Act 1975 ('the Act') due to decisions in Europe and England & Wales on pregnancy and maternity. The changes came into effect on 6th April 2008.

Since April 2007, women have been entitled to take 26 weeks ordinary maternity leave (OML) and 26 weeks additional maternity leave (AML). There is no longer a qualifying period of employment for entitlement to AML.

By far the most important change to the Act is that all women on maternity leave, OML or AML, will be entitled to the benefit of all terms and conditions of employment except the terms relating to remuneration (other than contractual or statutory maternity pay). This seems to be a significant extension in maternity rights. To allow employers more time to prepare for this change, the Government has stated that these changes will apply only to women whose expected week of childbirth falls on or after 5 October 2008. Women may be entitled to receive, until the end of AML, benefits that do not consist of monetary payment provided those benefits do not depend on the woman being at work. For example, a woman may be entitled to continue using a company car or to continue benefiting from private medical insurance during AML. Further, an employer may have to take into account the time the woman spends on OML and AML when working out her seniority, length of service and qualifying periods for promotion, transfer and training. This would also apply to her access to any other benefits, facilities or services calculated by way of length of service. For example, if a woman is entitled to contractual holiday entitlement over and above the minimum 24 days holiday under the Working Time Regulations ('the statutory entitlement'), she may continue to accrue contractual and statutory entitlement during AML. Finally, a woman on maternity leave will be able to claim discrimination for non-payment of a discretionary bonus that relates to the two-week period following childbirth when she is on compulsory maternity leave (CML). The payment of discretionary bonuses should be pro-rated to include the time spent on CML.

The following are other changes to the Act, which all employers should be aware of (**these apply from 6th April 2008**):

- A wider definition of harassment. A person complaining of harassment only needs to show that the alleged harassment was connected or associated

with sex. The harassment does not have to amount to conduct of a sexual nature. Two examples of conduct that may amount to harassment are:

- An employee is offended by sexist remarks, which are about someone else;
- Male colleagues dislike a female colleague and put office equipment on a high shelf to make it hard for her to reach. This could amount to harassment because women are, on average, shorter than men.
- Employers will be liable for failing to protect employees from harassment by third parties (customers/clients) if the employer knew the harassment had occurred on at least 2 other occasions;
- A woman who claims she was treated less favourably on the ground of pregnancy or because she exercised the right to maternity leave does not have to show how she/another person would have been treated had she/the other person not been pregnant or exercised the right to maternity leave. For example a woman's duties include heavy-lifting, which she cannot do whilst she is pregnant, but she is still required to do so. The woman could have a claim for discrimination. The employer cannot escape liability by saying the woman would have had to perform the tasks had she not been pregnant.

What should you do?

Given that all women are now entitled to take AML from the first day of employment, it is likely that more women will decide to take up to 52 weeks maternity leave. Even if you currently do not have a pregnant member of staff, it is extremely important that you check whether you offer different terms to women on OML and AML. If so, the contracts should be amended to ensure that you offer the same terms to all women, whether they take OML or AML.

Further, employers should have anti-harassment and equal opportunities policies in place which make clear they do not tolerate objectionable behaviour. If your employees have access to the internet/e-mail, there should be a policy prohibiting access to or communications of sexually explicit material. This type of behaviour should be on the list of examples of gross misconduct. All employees should be made aware of the policies and managers should be given appropriate training. Employers should ensure the physical environment is free of material, such as posters/magazines with a sexual content, which could amount to harassment or create an atmosphere of harassment.

OUR CORPORATE EMPLOYMENT SERVICES TEAM WOULD BE HAPPY TO HELP YOU CHECK AND AMEND YOUR CONTRACTS AND DRAFT OR AMEND ANY RELEVANT POLICIES. PLEASE CONTACT ROSINE DAWSON ON 01908 300710 OR rosine.dawson@borneos.co.uk

Whilst we have attempted to make this employment law update as accurate as possible, detailed advice should be obtained before taking or refraining from action as a summary of this nature can never be a substitute for a considered professional opinion.