

Employment Law Update - Autumn 2009



Increase in cap on a 'week's pay' for redundancy and other payments:

The statutory cap on a 'week's pay' has risen from £350 to £380 as of 1 October 2009. This was one of the measures announced in last April's budget. The effect is to increase statutory redundancy payments as this is the amount of a 'weeks pay' which is used in their calculation. However, it also applies in all cases where the cap on a 'week's pay' applies, including the Basic Award in unfair dismissal cases.

Annual minimum wage increases:

	Oct 2008	Oct 2009
Workers aged 22 and over	£5.73	£5.80
Workers aged 18-21	£4.77	£4.83
Workers aged 16 and 17	£3.53	£3.57

Employers are now unable to use tips and service charges to bring workers wages up to the level of the National Minimum Wage.

Sickness during periods of holiday:

The European Court of Justice (ECJ) has decided that if a worker falls ill whilst on holiday this does not count towards the statutory minimum period of paid annual leave under the Working Time Directive.

The case concerned an employee who was due to take annual leave from 16 July to 14 August. As he had an accident on 3 July he was actually off sick until 13 August. Because he had been sick for nearly all of his annual leave he sought to take this at a later date but his employer refused.

The ECJ found that the purpose of paid annual leave is to allow the worker a period of relaxation and leisure, whereas sick leave is to allow the worker time to recover. As a result if the worker does not want to use their annual leave entitlement whilst they are ill they must be allowed to take this at a later date.

The 'Heyday' Challenge: default retirement age of 65 remains at present:

The Employment Equality (Age) Regulations 2006 ("the Regulations") currently provide for a default retirement age of 65.

The default retirement age was challenged by the National Council on Ageing (under the name 'Heyday') as being incompatible with the European Directive relating to age discrimination.

The Regulations provide that both direct and indirect age discrimination can be justified. In March 2009 the European Court of Justice (ECJ) delivered its verdict on questions referred to it regarding the UK's compliance with European law in respect of age discrimination and referred the case back to the UK national courts to determine whether the default retirement age was justified.

The default retirement age would be discriminatory unless 'justified by legitimate social policy objectives, such as those related to employment policy, the labour market or vocational training', and it would have to be a proportionate way of reaching that objective. So, if the social policy objectives could be achieved by other means that did not have such an impact on the group over 65 years of age then those would have to be pursued.



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If you have any questions about issues raised in this update our Corporate Employment Services Team is available to advise you on these or any other employment law issues.

Please contact **Rosine Dawson** on 01908 300710. Alternatively you can email rosine.dawson@borneos.co.uk

Whilst we have attempted to make this briefing 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.

The High Court handed down its decision on 25 September 2009. It was held that the default retirement age had been implemented in order to satisfy legitimate social policy objectives in respect of the labour market. The default age of 65 was held to be a proportionate means of reaching these objectives.

However, this finding was only reached because the default retirement age is subject to review in 2010, and the High Court commented it was unlikely that a default retirement age would be necessary beyond that review, and then it would no longer be justified.

So at present, if you follow appropriate procedures in relation to retirement, a dismissal by reason of retirement at or beyond the age of 65 may be fair, but this could be subject to change from next year. If you are considering enforcing a compulsory retirement at age 65 then please seek detailed advice from us before you take any action.

Retirement procedure - in brief

In order for a dismissal to be fair by reason of retirement an employer must follow set procedures by giving notice of the intended retirement date to the employee between 6 and 12 months before that date. The employee has the right to request to work beyond the intended retirement date, and if such a request is made the employer has a duty to consider it.

Practically speaking we advise all employers to establish a forward planning diary system in respect of their employees' age and any proposed retirement date, in order to ensure that the written notice to be sent to the employee is triggered at the appropriate time.

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