

Smith & Jones S O L I C I T O R S

New dismissal rules apply to most terminations

The Employment Act 2002 (Dispute Resolution) Regulations 2004 come into force on 1 October 2004. As of that date all employers, regardless of size, will have to operate minimum statutory grievance and disciplinary procedures.

From 1 October, an employee will normally be disqualified from bringing an unfair dismissal claim, or most other claims, in an employment tribunal unless they have first followed the statutory procedure. It will automatically be unfair dismissal if an employer dismisses an employee without completing the appropriate statutory procedure.

Employers will have to follow the new procedures with regard to dismissals not just where the termination is on the grounds of capability or conduct but also when they are contemplating dismissing an employee on the grounds of redundancy, non-renewal of a fixed term contract and also on retirement.

The standard dismissal and disciplinary procedure has three steps. Each step and action under the procedure must be taken without unreasonable delay. The mandatory procedures are an addition to ordinary concepts of fairness under the Employment Rights Act 1996.

There are circumstances in which the procedures will not apply. They will not apply to, for

example, constructive dismissals, industrial action dismissals, some collective redundancies, and some dismissals where the employer's business suddenly ceases and all employees are dismissed.

The Department of Trade and Industry has published useful guidance, entitled 'Guidance on the Employment Act 2002 (Dispute Resolution) Regulations 2004 and associated provisions in the Employment Act 2002' which can be found at:

www.dti.gov.uk/er/comprehensive_guidance.pdf

These changes are important and they affect all employers and employees. Clearly there are pitfalls at each stage of the new three step procedure and failure to comply could be costly. Employers are advised to update procedures and practices forthwith in order to be ready for the implementation date.

Contact us if you would like further information.



ACT NOW



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ECJ rules UK maternity pay policy unlawful



The European Court of Justice (ECJ) has ruled that a woman who receives a pay rise at any time before the end of her maternity leave must receive the benefit of this in the earnings-related part of her maternity pay.

Failure to do so is a breach of the equal pay provisions of European law.

The Woolwich Building Society calculated a woman's earnings-related maternity pay on the

basis of her earnings in the fifth and sixth months of her pregnancy. This is the period, under the present law, for calculating the 90 per cent of earnings which is payable for the first six weeks of maternity leave. They did not take into account a 10 per cent pay rise granted to the employee because it came after the reference period used in the calculation.

The Court ruled that any pay increase awarded between the beginning of the reference period and the end of the maternity leave must be reflected in the amount of maternity pay.

Contact us if you would like individual advice on this topic.

In brief

Consultation launched on long working hours

The Government has launched a consultation on long working hours and the operation of the UK's opt-out from the 48-hour weekly working limit under the European Working Time Directive. The consultation paper is available on: www.dti.gov.uk/er/work_time_regs/index.htm.

EOC guidance on equality and diversity

The Equal Opportunities Commission (EOC) has updated its guidance for small firms on avoiding unlawful discrimination on the grounds of race, sex, disability, sexual orientation and religion or belief. The six-page leaflet gives basic advice on recruitment and management policies and is a useful starting point for ensuring your workplace practices comply with the laws on equality of treatment.

The guidance can be found at:

www.eoc.org.uk/cseng/advice/eo_is_your_business_too_gb.pdf.

CRE publishes draft code of practice on eliminating racism

The Commission for Racial Equality (CRE) has published a draft revised statutory code of practice aimed at eliminating racism from the workplace.

The revised guidance is intended to help employers put into practice complex legislation and, as a statutory code, its provisions can be referred to in employment tribunals. The target date for the launch of the finalised statutory code is 1 April 2005.

The consultation document is available on the CRE website at:

www.cre.gov.uk/gdpract/employment_code.htm

New measures to tackle illegal working

All employers in the UK must make basic document checks on every person they intend to employ. It is a criminal offence to employ someone, aged 16 or over, who has no right to work in the UK, or no right to do the work you are offering.

Changes to section 8 of the Asylum and Immigration Act came into force on 1 May 2004. These make it easier to prosecute companies which fail to comply.

A number of the documents previously accepted as proof of entitlement to work in the

UK have been exploited by forgers. These have now been removed from the list of permissible documents and employers will not be able to rely on copies of them to establish a defence from prosecution.

Home Office guidance makes it clear which original documents employers are required to see and outlines acceptable methods of copying them. Guidance is also available on the Employers' Information section of the Immigration and Nationality Directorate website at: www.ind.homeoffice.gov.uk.