

Employment Law Update April 2009 - Part II

Demise of the Statutory Dispute Resolution Procedures

The now infamous Statutory Dispute Resolution procedures will (notionally) cease to have effect from 6 April 2009 - hurrah hurrah - but before we all celebrate too soon, it's not quite that simple - it never is. In brief the position will be as follows

Statutory Dismissal and Disciplinary Procedures

These will continue to apply from 6 April 2009 if, prior to that date, the procedures were applicable to the circumstances of the particular case, and an employer has: -

1. Dismissed the employee; or
2. Taken disciplinary action against the employee; or
3. Complied with step one or step two of the standard procedure, or step one of the modified procedure.

Statutory Grievance Procedures

These will continue to apply where the action complained of by the employee occurs wholly before 6 April 2009. They will also apply where the action complained of began before 6 April and continued afterwards and where the employee presents a complaint to a Tribunal based on those matters before 4 July 2009, or 4 October 2009 in the case of equal pay, redundancy or certain industrial dismissal claims.

The procedure, as always, is complicated and no doubt designed to ensure the continued instruction of employment law solicitors! Trying to simplify matters:

- if all the events complained of occurred before 6 April 2009 then the old rules will apply
- if all the events complained of occurred from 6 April 2009 or afterwards, the new rules will apply
- for acts complained of occurring before and after 6 April 2009 then the chances are the old rules will apply with some exceptions.

New Rules

We are now reverting to the 'old procedure' that existed before the Statutory procedure was brought in - which requires employers to have regard to the ACAS Code of Conduct. The failure to follow this code (details of which can be found on the ACAS website WWW.ACAS.ORG.UK) will not make a dismissal automatically unfair (unlike a failure to follow the statutory procedure which does) but may give rise to an award of additional compensation of up to 25% of any compensation awarded by the Tribunal.

Other changes to note

Where an employer fails to pay a redundancy payment or fails to return wages unlawfully deducted (or in either case delays in doing so) any loss attributable to that failure may, after 6 April 2009, lead to an additional award to compensate the employee for that financial loss.

It remains the case also that a Claimant who succeeds in a principle claim will also be entitled to an award of between 2 and 4 weeks' pay for failure to provide an employee with a Statement of Particulars required under s1 of the Employment Rights Act 1996.

Flexible Working - the 16's and under

As most employers will know, those with parental responsibility for children under 6 or disabled children under 18, and those who care for certain adults, have the right to request flexible working.

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From 6 April 2009 this right will be extended to cover employees with parental responsibility for children aged 16 and under. The other requirements for flexible working are;

1. That you have to be an employee
2. That you have to have worked for your employer continuously for a period of 26 weeks prior to the date upon which the request for flexible working is made; and
3. No other request for statutory flexible working has been made in the previous 12 months

Other requirements to be satisfied are that:

1. The employee be the mother, father, adopter, guardian, special guardian, foster parent and private foster carer of the child in question or a person who has been granted a resident order in respect of that child.
2. Is married to or the partner or civil partner of the child's mother, father, adopter, guardian, special guardian, foster parent or private foster carer or a person who has been granted a residence order in respect of that child.

The Employer has a duty to consider any request for flexible working seriously.

National Minimum Wage

Employers will already be aware that monitoring and enforcement of the National Minimum Wage is undertaken by HM Revenue & Customs compliance officers who will have extended powers to enter premises, carry out investigations and take away NMW records for investigative purposes.

In addition, underpayment of the National Minimum Wage to an automatic penalty of up to £5000 with more serious cases subject to an unlimited fine.

For investigations commencing on or after 6 April 2009 concluding there has been an underpayment then, for pay periods starting:

1. Before 6 April 2009, employers will have to pay the arrears according to the new formula but without financial penalty
2. On or after 6 April 2009, employers will be required to recalculate the arrears according to the new formula and they will also have to pay a penalty which is currently set at 50% of the under payment with a minimum of £100 and a maximum of £5000.

The new formula will require employers to recalculate the arrears from all past pay periods at current NMW rates if the current NMW rate is higher than the rate or rates applied during the period of underpayment.

How may we help you?

Here at Gordon Brown Associates we assist employers in proactively managing both the relationship they have with their employees and, where that relationship fails, the consequences of that breakdown. We can offer you a "Health Audit" in which we will review your documentation and procedures and advise on any changes that are necessary to assist in minimising the prospect of any claim being brought.

Additionally, we provide seminars and workshops to take them through the pitfalls of a disciplinary and dismissal process and to explain how to get the best from employee grievances.

For more information please contact Jonathon Stokes or Barry Hutchinson on 0191 230 8103.