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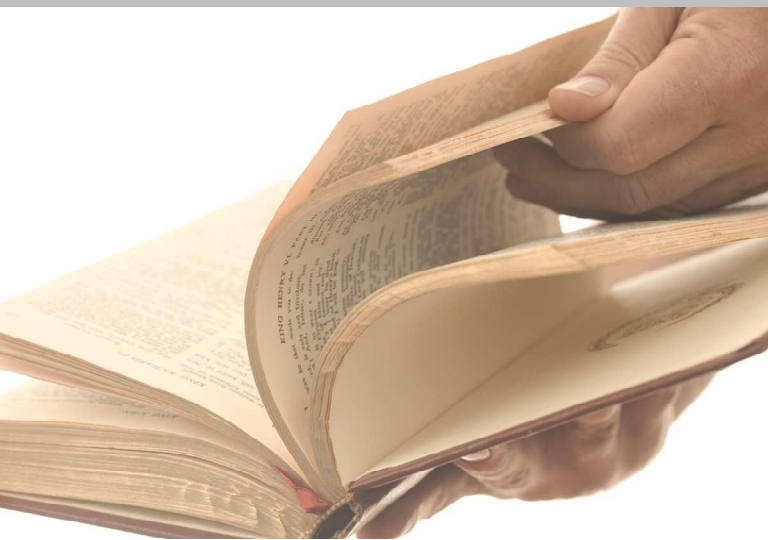
6 April 2010 - New Tribunal Powers on Public Interest Disclosure

PLUS :-

With the coalition Government having announced that it is to implement the Equality Act from October 2010 onwards we look at some of the key changes that you need to know about

AND

How to fairly suspend an employee from work.



Changes to Statutory Maternity, Paternity and Adoption Payments

From 6 April 2010, the standard rates of statutory maternity pay, statutory paternity pay and statutory adoption pay will increase from £123.06 to £124.88. Statutory sick pay will continue at the rate of £79.15 per week.

Lower earnings limit: The lower earnings limit for national insurance will increase to £97.00 per week from 6 April 2010.

Introduction of Regulations Relating To Additional Paternity Leave

The Work and Families Act 2006 came into force on 6 April 2010, but will have effect for parents of children due on or after 3 April 2011 (or adopters notified of a match for adoption on or after 3 April 2011). These regulations allow new parents to benefit from up to six months' additional paternity leave if their partner returns to work before the end of the maternity/adoptive leave period to which he/she is entitled.

A qualifying employee will be able to take between 2 and 26 weeks' additional paternity leave, in a single block, within the child's first year, to enable him or her to care for the child. In normal circumstances additional paternity leave will be available during the second 6 months of the child's life - the first 6 months will be preserved for the other partner to take maternity/adoptive leave. The earliest that additional paternity leave will be able to begin will be 20 weeks after the baby is born. There will be some exceptions to this, for example where a mother dies during the first year after childbirth, when the date that leave can transfer to the partner will be from the date of death, and the additional paternity leave may be for up to 52 weeks.

If the employee's partner returns to work after 26 weeks' maternity leave but before he/she has taken her full entitlement to 39 weeks' statutory maternity pay, adoptive pay or maternity allowance, her partner may be entitled to additional paternity pay for the remainder of the 39-week period during which their partner would have received statutory maternity pay, maternity allowance or adoptive pay, had they not returned to work.

To qualify for additional paternity pay, the employee must satisfy the same earnings and continuous service qualification requirements as for the current entitlement to statutory paternity pay.

Additional paternity pay will be payable 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, eligible employees will be able to take a maximum of 13 weeks' paid and 13 weeks' unpaid leave. However, no payment will be due in respect of any week in which:

- the employee's purpose is not to care for the relevant child;
- the employee is entitled to statutory sick pay;
- the employee returns to work having exhausted his or her entitlement to keeping-in-touch days (see below);
- the employee continues to work for an employer that did not employ him or her at the qualifying week or the week preceding the 14th week before the expected week of placement; or
- the employee's circumstances have changed and he or she is no longer entitled to paternity pay, for example he or she is in legal custody.

Employees will need to give 8 weeks' notice of the date from which they expect liability for payment to commence and both parents will need to certify relevant information to establish entitlement. There will also be a 28-day notification period for employers to confirm entitlement to additional paternity leave and pay and a 6-week notice period for employees to inform employers of any changes to their start and finish dates for additional paternity leave and pay.

There will be no change to the existing 2-week paid ordinary paternity leave period taken around the date of birth, which will be known as "ordinary paternity leave" and to be eligible for additional statutory paternity leave and pay, the employee will have to have satisfied the qualifying conditions for ordinary paternity leave and pay. Employees will have the opportunity to take up to 10 keeping-in-touch days during his additional statutory paternity leave and to return to their job at the end of the leave period.

HM Revenue and Customs (HMRC) has acknowledged that there will be limited cases in which additional paternity

leave and pay will apply before 2011, for example where a baby is due in April 2011 but is born prematurely and the mother dies in childbirth. As commercially produced payroll software may not be available in time for this eventuality HMRC will provide a calculator on its website to assist employers.

Employers will be able to recover most or all of additional statutory paternity pay from the state, and will administer additional statutory paternity pay in the same way as ordinary statutory paternity pay. To prevent fraud HMRC intends to carry out compliance checks and may impose financial penalties where it can be shown that employees fraudulently or negligently made claims for additional paternity leave and pay.

The Regulations do not apply to adoptions from overseas. Separate draft Additional Paternity Leave (Adoptions from Overseas) Regulations 2010 and draft Additional Statutory Paternity Pay (Adoptions from Overseas) Regulations 2010 have been laid before Parliament.

The Work and Families Act 2006 also provided the legislative framework for regulations to extend statutory maternity pay, statutory adoption pay and maternity allowance to 52 weeks. The Government has not announced a date for this extension. In addition, there is a proposal to have future consultation on decreasing the notice period for the two weeks ordinary paternity leave period. The Government also intends to investigate the barriers to taking paternity leave that fathers who are not eligible to take statutory paternity pay face.

New Right To Request Time Off For Training

From April 2010, the right to request time off for training comes into place for firms with more than 250 employees. This right extends to companies with less than 250 staff from April 2011. To request time off for training, employees will have to have 26 weeks qualifying service at the time of making their request. Employers have a duty to consider the request but if time off is approved, they do not have to pay employees during agreed time off for training. Training should be to improve an employee's effectiveness in the organisation or the performance of the organisation.

Employers can simply approve the request and provide written confirmation of the approval within 28 days. Alternatively, they need to hold a meeting to discuss the request within 28 days. Right of representation for the employee is allowed and written response to the request is required within 14 days. The company's response must state the decision, any compromise agreed at the meeting, the business reason together with an explanation as to why this is relevant to the employee's application and appeal procedure details (if the request is to be rejected). If unhappy with the decision, the employee must appeal within 14 days, the appeal hearing must be convened within 14 days and a written outcome given within 14 days of the hearing. Any extensions to this timetable must be agreed in writing with the employee.

Employees may go to a tribunal where refusal was based on incorrect facts or where company did not follow the correct procedure. Tribunals may make the organisation reconsider the employee request and award the employee up to 8 weeks pay.

"Fit" Notes Replacing "Sick" Notes

From 6 April 2010, a new "fit note" replaces the traditional sick note certificate. The fit note is designed to encourage employers, employees and doctors to move away from a rigid system of employees being either fit or unfit to work and towards a more flexible approach placing the emphasis on what employees are able to do at work, thus helping sick employees to return to work as soon as they are able.

As well as declaring that an employee is unfit for work, a doctor can also state on the fit note that an employee "may be fit for work taking account of the following advice". There is space below this option on the fit note for the doctor to give suggestions for changes that could be made to the employee's duties, working environment or hours of work to enable him or her to go to work. The doctor could also recommend a phased return to work after illness so that the employee can gradually increase his or her workload.

Examples of amendments to duties include:

- removing heavy lifting from the job duties of an employee who has suffered a back injury; and

- reducing the more pressurised parts of a role (for example, removing customer-facing duties) from an employee who has been suffering from stress.

Changes to the working environment could involve:

- providing a ground-floor workstation for an employee who has difficulty getting up and down stairs because of a musculoskeletal disorder; and
- providing a special chair for an employee who has been suffering from back pain.

An employee's hours of work might be altered, for example, to allow him or her to start or finish work earlier or later to avoid the rush hour on public transport. Similarly, an employee who tires easily might be permitted to work fewer hours, at least on his or her initial return to work as part of a phased return.

As with the old sick note system, an employer cannot require an employee to provide a fit note until after seven calendar days of illness, for statutory sick pay purposes. The information given on the form continues to be advisory and is not binding on employers.

Employers have a duty to make reasonable adjustments for disabled people under the Disability Discrimination Act 1995. Therefore, although the fit note is not binding, an employer may need to make certain adjustments to accommodate a disabled employee.

New Tribunal Powers on Public Interest Disclosure

This legislation comes into force on 6 April 2010. This will give employment tribunals the power to pass information about public interest disclosure to the relevant regulator, with the consent of the claimant. The new policy will apply to any revised ET1 form claim received by the ETS Service on or after commencement on 6 April 2010.

Equality Act - Key Changes from October 2010.

Pre- employment health related checks

The Equality Act limits the circumstances when you can ask health related questions before you have offered the individual the job. Up to this point, you can only ask health related questions to help you:

- * decide whether you need to make reasonable adjustments for the person to the selection process
- * decide whether an applicant can carry out a function that is essential (intrinsic) to the job.
- * monitor diversity among people making applications for jobs
- * take positive action to assist disabled people
- * assure yourself that a candidate has the disability where the job genuinely requires the jobholder to have a disability

A jobseeker cannot take you to an Employment Tribunal if they think you are acting unlawfully by asking questions that are prohibited, though they can complain to the Equality and Human Rights Commission.

Once a person has passed the interview and you have offered them a job (whether this is an unconditional or conditional job offer) you are permitted to ask appropriate health – related questions.

Extension of employment tribunal powers

Under previous legislation, an employment tribunal could make a recommendation that an employer must eliminate or reduce the effect on the claimant of any discrimination. The Act extends this power so that it will now be possible for a tribunal to make recommendations that an organization takes steps to eliminate or reduce the effect of discrimination on other employees, not only on the claimant.

Equal pay – direct discrimination

The Equality Act retains the framework that was previously in place. This means that in most circumstances a challenge to pay inequality and other contractual terms and conditions still has to be made by comparison with a real person of the opposite sex in the same employment.

However, a change in the Equality Act allows a claim of direct pay discrimination to be made, even if no real person comparator can be found. This means that a claimant who can show evidence that they would have received better remuneration from their employer if they were of a different sex may have a claim, even if there is no-one of the

opposite sex doing equal work within the organisation. This would be a claim under sex discrimination.

Pay Secrecy

The Act makes it unlawful for you to prevent or restrict your employees from having a discussion to establish if differences in pay exist that are related to protected characteristics. It also makes terms of the contract of employment that require pay secrecy unenforceable because of these discussions. An employer can require their employees to keep pay rates confidential from some people outside of the workplace, for example a competitor organisation.

Suspension – Is it Fair?

The ACAS code of practice on disciplinary and grievance procedures provides practical guidance on how to deal with such issues as they arise in the workplace. Part of the disciplinary procedure is the option to suspend, however it is worth noting that taking this option may put the employer at risk of an unfair dismissal claim if any of the following can be deemed applicable:

- **The suspension is imposed without reasonable and proper cause.**
An employer should not suspend an employee without just cause. It is not appropriate to suspend simply because investigative enquiries are being made. If it is necessary to remove the employee from, for example, contact with particular colleagues or clients, maybe the opportunity to temporarily change the employee duties or department would be better considered.
- **It is imposed in an unreasonable way.**
Suspensions can have serious implications for the individuals involved, not least for their morale and professional reputation. Suspensions should only occur if the continued presence of the employee would cause a significant risk to either the business or fellow employees.
- **The suspension is unpaid, in the absence of a contractual right for it to be without pay.**
If after due consideration suspension is unavoidable, the employer should ensure that the employee suffers no detriment as a result, the employee should be fully paid and benefit from the same terms and conditions of employment.
- **There is an unnecessarily protracted period of suspension.** In line with the code of practice, the period of suspension should be kept as brief as possible and its continuation should be kept under review. Where possible the employer should advise the employee of how long the suspension is expected to last, and advise them as to the progress of the investigation. The suspension should be lifted immediately if the circumstances of the case no longer justify it.

Best practice would deem that if a Company issues a contract of employment which contains a procedure that applies to the suspension of an employee for misconduct it is important to ensure that it complies with it fully and that the action is appropriate.

Suspension will not be necessary in every case.

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