

Top 5 Tips for Employers in 2011

The ever changing area of employment law shows no sign of slowing down in 2011 with a number of legislative changes coming into force.

Here are our top 5 tips to protect your business in relation to the forthcoming changes:

1. Bribery

The Bribery Act 2010, which is due to come into force during April 2011, will introduce a new, strict liability, corporate offence of failing to prevent bribery by individuals acting on behalf of an organisation.

The only defence that will be available to employers will be to show that they have adequate procedures in place to prevent bribery and corruption.

It will therefore be vital to ensure that you have effective whistle blowing policies and procedures in place which encourage your employees to report instances of bribery.

Our tip is to ensure that you review, with your legal advisers, the adequacy of your internal policies and to ensure that you have written procedures in place, which are readily available to all staff and consultants, which deal with the prevention of bribery. You could consider incorporating these procedures into your contracts of employment and including a clause enabling you to terminate employment in the case of a breach of the policy.

2. Leave for Fathers

Fathers of babies due after 3rd of April 2011 will be entitled to take additional paternity leave of up to 26 weeks before the child's first birthday. This right will apply where the mother has returned to work with some of their statutory maternity leave untaken.

During additional paternity leave the terms of the employee's contract will remain the same, except for remuneration. Benefits such as a company car or private health care, for example, must continue but the father will not be entitled to be paid his salary and will instead receive statutory paternity pay, if he is eligible.

Our tip would be to keep this area, and your maternity and paternity policy, under review in the forthcoming months. In September 2010 the government confirmed that these regulations are only in force as an interim measure in relation to their plans to extend flexible working rights and encourage shared parenting. There are therefore likely to be further changes in this area.

3. Time to Train

The right to request time off work to undertake study or training, which currently applies to businesses with 250 or more employees, will be extended to apply to all employers from 6th April 2011.

All employees with at least 26 weeks continuous service will have the right to make a request. In the written request employees must explain how the training will improve their effectiveness at work and the performance of the business.

The right is only to make a request, it is at the employer's discretion whether they will allow the request, however the regulations prescribe a precise procedure which employers must be careful to follow to avoid a potential claim. There is no right for the employee to be paid for the time off.

Our tip would be to allow willing employees unpaid time off for additional training wherever reasonably possible. In the long run this will improve their performance and that of the company

and can also be good for morale and increase loyalty to the company. However, you should always be careful to treat employees consistently to avoid potential claims for discrimination.

4. Retirement

Retirement is a potentially fair reason to dismiss an employee and will currently not constitute age discrimination provided the employee has reached the default retirement age of 65 and certain statutory procedures are followed.

This situation will change on 6th April 2011 when the default retirement age and its related statutory retirement procedures begin to be phased out before they are abolished entirely on 1st October 2011.

If you currently wish to retire an employee who is over 65 you should issue a notification to them to this effect by 1st April 2011.

If retiring an employee after 1st October 2011 you can no longer rely on the default retirement age and will instead need to objectively justify your contractual retirement age as a proportionate means of achieving a legitimate aim. Alternatively you would need to rely on a different potentially fair reason to dismiss the employee, such as their capability.

If you do plan to continue to retire employees at a certain age, our tip would be to ensure that you set a retirement age in your contracts of employment and to consider and discuss with your legal advisers, before the changes come into force, on what grounds the retirement age can be justified.

5. Agency Workers

When the Agency Workers Regulations come into force on 1st October 2011 agency workers will be entitled to the same basic working and employment conditions as permanent workers. Basic conditions include pay, rest periods and annual leave.

To be entitled to this right, the agency worker must have worked in the same role, for the same hirer, for a period of at least 12 continuous weeks. There are provisions in the regulations which prevent employers from attempting to get around this qualifying period, therefore you cannot rotate agency staff between different jobs without this right kicking in.

Our tip is to review the contracts of any agency workers working for you now to ensure that their contracts of employment are not less favourable than those of your permanent staff. It is good practice to review all contracts of employment from time to time to check that all employees are being treated in the same way to avoid potential discrimination claims.

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