



DUKESONS
BUSINESS LAW

This update provides general information only and does not constitute legal advice. If you want legal advice on any of these issues, please feel free to contact me.

26th November 2010

As a result of legislation that has just been passed, you may need to have your employment agreements updated, or you may need legal advice. Please contact me if I can help.

The main changes are:

- Union access to a work place will require the employer's consent, which mustn't be unreasonably withheld. The employer's response must be given no later than the working day after the request has been received. Delay in response or an unreasonable refusal may give rise to a penalty.
- Employers will be able to communicate directly with employees during collective bargaining (including informing employees of the employer's proposals) provided that they act in good faith.
- Employers must retain a copy of any signed employment agreement. If the employer has given the employee a proposed agreement, and if the employee does not sign it (or any replacement agreement) or agree to its terms, the employer must retain a copy of the unsigned agreement. If the employee requests, the employer must give the employee a copy of the employee's agreement or if no agreement has been signed, then of the unsigned agreement.
- Any employer may now take advantage of trial periods (up to 90 days) - employment agreements need to specify that the employment is subject to a trial period (specific wording is required). In addition, recent case law suggests that whilst an employer will not generally have to justify termination at the expiry, there are some procedural requirements that will apply. Many employers may now want their standard employment agreements to be amended to provide for trial periods - employers will need to be aware of what the procedural requirements are likely to be.
- The test for justifying a dismissal of an employee will be based on what a fair and reasonable employer could have done in the same circumstances, not what a fair and reasonable employer would have done. This moves the emphasis from focusing on what may have been the sole correct reason for the dismissal on to what the range of possibilities were that a fair and reasonable employer could have done. A range of relevant circumstances must be taken into account.
- Disciplinary processes are not to be subject to pedantic scrutiny. However, there will still be uncertainties from time to time as to whether a correct procedure has been followed as the new provisions create some issues at the same time as solving some issues.

- Reinstatement will no longer be the primary remedy, but just one of the options available for unjustified dismissal.
- Employers will be able to ask for proof of sickness at any time so long as they cover the employee's costs in obtaining proof. Whilst this change will be welcomed by many employers, it may give rise to practical problems. Policies or manuals that deal with leave issues may now need to be amended.
- Calculating entitlements for employees who work variable hours will be simpler, using a new calculation known as "average daily pay".
- Employees will be able to trade in one week's annual holiday for cash. Employers cannot require this to be done but they can refuse to allow an employee to cash in. Again, policies or manuals that deal with leave issues may now need to be amended.
- Employers and employees will be able to agree to transfer the observance of a public holiday to another working day.
- Penalties for non compliance with the Holidays Act will be doubled.

Most of these changes operate from 1st April 2010.

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