

Time's up for retirement age



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As of April 6, it is no longer possible to notify an employee of compulsory retirement purely on the grounds of age.

That's because the Government has decided that the default retirement age (DRA) has reached the end of its working life and is abolishing it with effect from October 1.

The transition provisions attached to the change in legislation come into force on April 6 and, in essence, applies to notifications issued before March 31.

Previously, it had been possible for companies to retire all employees at the age of 65 regardless of their circumstances.

But the Government believes that, as people are living healthier, longer lives, then the age people retire should also change and become a matter of choice, rather than compulsion.

Clearly, it hopes that in encouraging more people to work longer, it will also give a boost to the economy.

But that is to ignore the cost of dealing with such a significant change in legislation which has broader implications on businesses than whether or not individual employees work beyond their 65th birthday.

For example, many employers offer staff group risk insured benefits such as health insurance or death in service benefits, which can become significantly more expensive to provide for those over the age of 65.

There is also a provision for employers to enforce a compulsory retirement age, providing that they can objectively justify it. Examples may include police officers or air traffic controllers, but there is potential for confusion here.

For more information on the transition arrangements, contact the ELAS team on 0161 785 2000.

The Bribery Act 2010

The Bribery Act 2010 was to have come into force this April, but has now been put back to July 1. This Act aims to promote anti bribery practices among businesses. This will have an impact on employment law in that the Act will introduce a corporate offence of failure to prevent bribery by persons working on behalf of a business. The Ministry of Justice has recently published detailed guidance on the Act, which we will comment on further in a future newsletter.

Pensions

By way of advance notice, the Pensions Act 2008 provides that all employers must enrol automatically all their eligible employees not already in a workplace pension scheme into the employer's pension scheme or the new national account scheme under the National Employment Savings Trust Scheme (NEST). This will commence in October 2012.

New Tax Year... New Start for your Payroll

With a new tax year looming, now is the ideal chance to take advantage of outsourcing your ELAS Payroll.

We understand that your employees are your most important asset so we help you ensure they are paid correctly on time – every time!

Whether you are a new start-up, an SME or a large blue-chip company, ELAS can manage your payroll, guiding you through the ever-changing legislation, leaving you to focus on your core business.

ELAS offers a complete professional and cost-effective solution to the management and administration of your payroll.

We will perform all payroll-related calculations which will not only include employee wages and deductions but also all related paperwork. ELAS can have little or as much input as required and we can also tailor a package specifically for your business.

As a current ELAS client you are eligible for significant savings on your payroll.

ELAS manages your payroll, YOU manage your business – a partnership you can rely on!

Call our payroll department today on 0161 785 2000 or visit <http://bit.ly/elaspayroll>

April 6, 2011: Red Tape Day

As well as changes to the default retirement age, there are a number of other legislative changes which come into force on April 6.

It is Government policy now to introduce major changes in red tape twice a year, in April and October, and despite the three-year moratorium on new business regulations announced in the budget, a number of new changes are coming into force as planned this April.

Equality Act

- (i) With effect from April 6, the single equality duty will be introduced. Section 149 of the Equality Act 2010 will require public authorities to eliminate discrimination and advance equality of opportunity and foster good relations between different groups. These duties should help public bodies meet the requirements under the general equality duty.
- (ii) Also as of April 6, the positive action provisions of the Equality Act come into force. This permits employers, under Section 159 of the Equality Act 2010, to treat individuals with a protected characteristic more favourably than others in connection with recruitment or promotion. This will apply only to candidates of equal merit and the more favourable treatment must enable or encourage an individual to overcome or minimise a disadvantage or participate in an activity where he or she is under-represented in that activity.

Parental rights

Fathers whose children are born on or after April 3 will be able to take advantage of additional paternity pay and leave.

Indeed, they – or parents who are matched with children for adoption on or after April 3, 2011 - will be entitled to take additional paternity leave of up to 26 weeks, providing that the mother returns to work.

Meanwhile, the right to request flexible working is extended as of April 6 to include parents of children under 18.

Statutory rates

Statutory Maternity Pay will rise from £124.88 to £128.73 as of April 6.

The lower earnings limit will also increase from £97.00 to £102.00.

Statutory Paternity Pay and Statutory Adoption Pay also increase by the same amount.

Statutory Sick Pay will increase from £79.15 per week to £81.60 per week.

Reduce absence costs by 30% with ELAS

At ELAS, we have always recommended taking a proactive approach to absence management – we have now taken it that one step further and created a Unique Absence Management System that can reduce absenteeism in your workplace by up to 30%.

Absence Assist is a 24-hour absence report line that will cut absenteeism, save you money and improve the health of your workforce. Moreover, all information is streamlined to you the employer automatically through our integrated software, Employersafe, alerting you to absence trends and, most importantly, saving you time and money.

ELAS will provide your employees with round-the-clock access to a trained absence manager or medical advisor who your staff must call – instead of phoning or texting their line manager – to report any absence.

Our specialists will take them through the initial absence procedure and make follow up calls to agree a back to work date ELAS maintain a unique position in the market by streamlining all information into software without you having to lift a finger or answer a call. Your absence records will be updated automatically, ensuring that all your personnel and payroll files are right up to date.

What's more, absence reports can be run at any time directly from the software and our Employment Law Experts are on hand 24 hours a day to deal with any legal issues that may arise from persistent absence.

Annabel Dawkins said: *"Our experience shows that just having to speak to an independent person, rather than text a line manager, will automatically reduce absenteeism.*

"More important in the long term, Absence Assist will also help identify any occupational health issues, allowing you to take action to dramatically reduce long-term absence."

For a three month trial of Absence Assist call ELAS on 0161 785 2000.

Brazen staff send absenteeism soaring

Workers seem to be getting more brazen as the economy recovers, with as many as 375,000 ringing in sick in one day at the peak of this winter's sickie season.

Our research suggests that the first Monday in February is the worst day for absenteeism. This year, a combination of low morale, the worst flu outbreak in a decade and managers' lenience meant more workshy staff than ever pulled a sickie – at a cost to the economy of £32 million.

Peter Mooney said: *"This has been the worst year we can remember for absenteeism, and it seems that more staff than ever don't even seem to mind about being caught.*

"As well as all the usual excuses, we had one member of staff call in with flu-like symptoms following a long weekend in Amsterdam, while others seemed to have plausible excuses until their managers saw them commenting about sickie day on Facebook and Twitter."

One of the problems was managers becoming lenient on minor points such as texting in sick because of the recession, added Mr Mooney.

"It's understandable that managers don't want to rock the boat when the pressure is on, but if you give some staff an inch, they will take a mile.

"Disciplining staff might seem like more hard work when you're already busy, but allowing staff to abuse the system will cost a lot more in the long run."



Company Fined for Asbestos Failings

A renowned high street retailer and a refurbishment contractor have been ordered to pay fines totalling £40,000 after both firms failed to manage asbestos safely during work at the retailer's Edinburgh store.

Inspectors from Edinburgh City Council found that up to 15 people may have been exposed to fibres when workers disturbed an asbestos board while working at the site.

The board was submitted to specialists for material analysis and results proved that it actually contained amosite (brown asbestos) and chrysotile (white asbestos). In view of these findings work was immediately suspended.

Subsequent investigations found that no Type 3 asbestos survey had been carried out prior to commencement of work at the site and that staff had not been properly trained.



Major High Street Bakery Fined for Pad Locking Emergency Exits

Inspectors from the London Fire Brigade discovered blocked corridors and a padlocked emergency fire exit at a major high street bakery.

In view of these findings the bakery involved pleaded guilty and has been ordered to pay £70,000 for fire safety breaches.

No-Win, No-Fee System Faces Reform

The Ministry of Justice is calling for a review of no-win, no-fee agreements in which claimants' lawyers can recover their fees from unsuccessful defendants in personal injury and damages claims.

A review by Lord Justice Jackson found that conditional fee arrangements have led to disproportionate increases in civil litigation costs in England.

In view of the increase, the Government has now introduced the civil litigation consultation, which is running alongside wider proposals for a radical reform of the legal aid system in England and Wales.

Under the current arrangements, claimants have no interest in the costs being incurred on their behalf because they do not have to pay anything towards them regardless of whether they win or lose.

The review also includes recommendations for a 10% increase in general damages, allowing lawyers to charge on a US-style contingency fee basis, in which they normally receive a percentage of the damages won and there is a system in place to protect personal injury claimants from paying winning defendant's costs.

Other recommendations for review include a ban or capping of referral fees paid to ambulance chasing firms who receive referral fees from personal injury law firms.

Health & Safety Executive Suggests Fee or Fault Tarriffs

The Health and Safety Executive has announced plans to charge businesses a fee for inspectors' work after issuing a notice of advice or information on how to rectify a fault when they are found in breach of their legal duties during HSE inspections.

The new approach is a way of offsetting the 35% cut in Government funding over the next five years, and will be welcomed by the vast majority of businesses who are compliant and who see companies get an unfair advantage by taking shortcuts.

Other proposals include increasing the costs the HSE recovers from businesses operating major hazard sites under its permissioning regimes and extending charging to include companies with comparable regulatory oversights.



Businesses split by Royal Wedding holiday

Businesses are split over whether they give staff the day off to celebrate the Royal Wedding on April 29th after the Government declared it would be a bank holiday, but did nothing to enforce it.

Peter Mooney said: "Under European law, all employees are entitled to 28 days holiday a year.

"If your contracts define this as 20 days holiday plus bank holidays, then April 29th is a legitimate day off just the same as Good Friday the week before.

"But if you define annual leave as 28 days, including time off for bank holidays, then nothing changes. Staff are still only allowed 28 days, despite there being nine bank holidays this year.

"If you want to close or if staff want to celebrate the Royal Wedding, then the extra day comes out of their own holiday entitlement.

"But even then, it's not quite that simple. Bear in mind that whatever you do this year sets a precedent for how you mark the Queen's Diamond Jubilee in 2012, which also has its own additional bank holiday."

Schools

ELAS goes back to school for Swavesey Village College



When Swavesey Village College in Cambridgeshire changed status from a Community School to a Trust School in June 2008, it was agreed that the health and safety arrangements needed greater focus.

In particular, the trustees and governors felt the recording and monitoring aspects of what was already being done needed to be improved.

The college had tried other packages in the past but found they did not address the unique needs of a school such as theirs.

Instead, college staff needed an expert who understood the needs of schools and the vast range of health and safety aspects involved in them; someone who could provide practical support, training, examples of risk assessments and a clear plan of how the school was going to make progress.

It chose ELAS in 2008 following a presentation made at the National Bursar's Conference and taking up references with a school it was already working with.

Martin Bacon, Principal, said: "Since then, our experience has been extremely positive and the visits and site inspections from an expert with a fresh pair of eyes have been invaluable.

"The responsiveness from our consultant has also been exceptional. No matter what the question is, he always comes back with a practical and sensible solution, either by email or telephone, and often with an example of the risk assessment that we need to complete.

"We knew that to achieve the level of health and safety systems we desired would take time.

Based on our experience another five schools in Cambridgeshire have also taken on the service and have set up a group of users in order to maximise the training opportunities and avoid re-inventing every wheel!

"Again, ELAS has been extremely supportive in facilitating this network."

Many more schools have recently been contacting ELAS for support as they make the transition to becoming academies.

For more information on ELAS's services for schools, call 0161 785 2000.

Blunders



WIN £25
M&S vouchers

It may not be as blatant as our last, but we think that this blunder is probably repeated in offices around the country – which is why we made it this quarter's winner. If you think you have seen better recently, send us a picture and you could win £25 in M&S vouchers. We'll even keep your secrets safe!

Send your photos to
blunders@employment-law.uk.com

Questions & Answers

One of my staff has recently been signed off work with stress? We're all under pressure, so how do I deal with one worker differently to everybody else?

Answer:

Work-related stress is a very serious problem for any employer, and employee. We all suffer a certain amount of stress from time to time, but when it starts to affect someone's work or health, employers need to react. When it affects health, stress can lead to headaches, stomach upsets, high blood pressure and even stroke and heart disease.

For too long, many employers have tended to confuse stress with pressure – and ignored it. Quite rightly, the courts have responded and, in recent years, compensations payouts have increased.

All employers have a duty to undertake risk assessments and manage activities to reduce the incidence of stress at work, and failure to do so can lead to claims of negligence. In the case of chronic stress, stress may be included as a mental condition covered by the Disability Discrimination Act – meaning employers have a duty to make reasonable adjustments to accommodate the needs of that employee.

As well as helping rehabilitate the employee who has been signed off, it would be prudent to conduct an audit of your workplace policies and practices to prevent future failure also.

I employ a lot of agency workers and have heard that the law is changing. Is that right?

Answer:

Yes, agency workers will soon be entitled to the same basic working and employment conditions as directly employed workers in the same job. The good news is that you still have time to prepare as the law only changes with effect from October 1, 2011.

Under the Agency Workers Regulations 2010, which came as a result of the EU Agency Workers Directive, agency workers will be entitled to the same basic rights as their directly employed colleagues after spending 12 weeks in a given job.

What this means in practice is that same rate of pay, duration of working time, rest periods, breaks and holidays provided for a regular employee will have to be provided to any agency worker who has completed 12 weeks continuous work in the same role.

Where it gets difficult to implement is staying on top of exactly what is included. For example, pay includes any fee, bonus, commission and holiday pay but does not include occupational sick pay, pension allowance or payment in respect of maternity, paternity or adoption leave.

For further information, contact ELAS on 0161 785 2000.



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