

Mothers to benefit from latest employment regulation changes

As the end of the year approaches, employers have a new set of regulations to absorb and implement in the workplace. Mothers of newborn babies are among those to benefit.

Women who gave birth on or after 5th October now receive improved maternity entitlements.

A pregnant woman is allowed to take 52 weeks maternity leave regardless of her length of service with her employer. The entitlement is made up of two sections. The first section is the 26 weeks of Ordinary Maternity Leave. The second section is the 26 weeks of Additional Maternity Leave.

During Ordinary Maternity Leave the woman must continue to benefit from the same terms and conditions that would have applied had she still been at work, apart from the terms relating to salary. Until now, these benefits did not continue in full into the 26 weeks Additional Maternity Leave. However, they do now for women who gave birth after 5th October.

For example, mothers will continue to qualify for contractual benefits such as participation in share schemes, reimbursement of professional subscriptions or gym membership. They will also be able to continue using company cars and mobile phones, unless they are provided for business use only.

A woman will retain her contractual rights to compensation and statutory redundancy pay if she is made redundant. However, the right to return to work after OML and AML remains the



same. At the end of OML, the woman has the right to return to the same post and is entitled to the same terms and conditions that she enjoyed before her leave began. After AML, if it is not reasonably practicable for the employer to hold the job open, she can be offered another position on similar terms and conditions which are no less favourable. There are parallel arrangements for women who adopt after 5th October.

Migrant workers

There are also changes that affect the employment of migrant workers. Employers wishing to hire foreign staff need to be aware that the Points Based System (PBS) for controlling immigration was extended in November.

Under the system, migrant workers are divided into five tiers ranging from the highly skilled to students and temporary workers. For each tier, applicants have to obtain a certain number of points which are awarded depending on their skills and the extent to which they will be able to contribute to the labour market.

Tier 1 of the PBS, which covers highly skilled migrants, was introduced in February this year.

Tier 2, which affects skilled workers, and Tier 5, which affects temporary workers, both came into effect in November. Employers have to apply to the Home Office to sponsor any migrant workers they wish to hire. The potential workers will have to satisfy the requirements needed for the appropriate tier and the employer may have to accept certain responsibilities to help with immigration control.

The rules for employing migrant workers are quite strict. For example, to hire a skilled worker in Tier 2, employers have to show that they cannot find a resident worker with equivalent skills and that the vacancy has been advertised in the UK.

Minimum wage rates

Employers also need to be aware that the National Minimum Wage rates were increased on 1st October. The rate for workers aged 22 and over rose from £5.52 per hour to £5.73. For those aged 18-21, the rate increased from £4.60 per hour to £4.77. The rate for workers aged 16 or 17 rose from £3.40 per hour to £3.53.

The Government is also introducing tougher sanctions against employers who fail to pay the minimum rates (see also panel opposite). There will be a new way of calculating arrears for workers who have not received their full entitlement which could lead to employers having to pay more than the original underpayment. They will also have to make a penalty payment.

Minimum wage prosecution

The owners of a family run butcher's shop have become the first employers in the country to be prosecuted for failing to pay the National Minimum Wage (NMW).

The butcher and his daughter pleaded guilty at Sheffield Magistrates Court to neglecting to pay the correct rate. The butcher was fined £700 and ordered to pay £9,065 in compensation to two former employees. His daughter was fined £100 and ordered to pay £2,009 in compensation.

There are six potential criminal offences under the National Minimum Wage Act. These are when an employer refuses or wilfully neglects to pay the NMW, when a person fails to keep or preserve records, knowingly causes or allows false entry in records, produces or furnishes false records or information, delays or obstructs compliance officers or when a person refuses or neglects to answer any questions or produce documents for compliance officers. Each offence carries a maximum fine of £5,000.

Court says discrimination 'by association' is illegal

Employers may have to re-assess their equal opportunities policies following a ruling by the European Court of Justice (ECJ) that 'discrimination by association' is unlawful.

The ruling provides greater protection to Britain's six million carers and will make

it easier for them to request favourable arrangements such as flexible working. The case involved legal secretary Sharon Coleman and her son Oliver who was born with a rare condition affecting his breathing and hearing. Ms Coleman claimed she was forced to resign because she was harassed by

her employers and denied the right to work flexible hours even though such arrangements were available to other employees.

She took the case to an Employment Tribunal which referred the matter to the ECJ for a ruling on whether "disability discrimination by association" is unlawful. The court ruled in her favour saying that the EU Directive banning discrimination in the workplace on the grounds of disability did not only protect the disabled themselves, it also extended to those who care for the disabled. Ms Coleman's case will go back to the Employment Tribunal for a hearing in the light of the new ruling.

The facts of Ms Coleman's case have yet to be determined by the Tribunal but the ruling ensures that the law now provides protection on the grounds of someone's association with a disabled person. It will also offer protection to those caring for elderly relatives. The ruling also reaffirms existing law that prohibits discrimination by association in the workplace on the grounds of religious belief, age or sexual orientation.

There is no doubt that this is a hugely significant ruling. Employers should ensure their equal opportunities policies are up to date so that they do not discriminate against staff who act as carers for the disabled or the elderly. For example, if they offer flexible working to the mothers of young children then they may have to offer the same rights to an employee caring for a disabled or elderly relative.

Default retirement age is 'not unlawful'

A legal adviser to the European Court of Justice (ECJ) says it is not unlawful for employers in the UK to oblige staff to retire at 65 as long as the process has a justifiable policy aim.

Advocate General Jan Marzak was expressing an opinion on a case brought by Age Concern challenging the UK's default retirement age of 65.

The European Directive on Equal Treatment bans discrimination on the grounds of age. Age Concern believes the Employment Equality (Age) Regulations 2006 fail to fully implement the Directive because they allow a default retirement age of 65.

Marzak expressed the opinion that this retirement age was not unlawful as long as it could be justified as a means to achieve legitimate labour market objectives. The ECJ was only asked to rule on whether the default retirement age was permissible under the directive. It was not asked to go further and rule



on whether or not it was justifiable. The Advocate General's opinion is not binding but it is followed in about 80% of cases. If the ECJ does follow his advice then the case will be referred back to the High Court in England to decide whether or not the default retirement age can be justified. There are currently about 260 related cases on hold pending the ruling by the European Court.

Ban on pressurising staff over pensions

Pressurising or even encouraging staff to opt out of a workplace pension scheme is to be made unlawful under proposed changes to the Pensions Bill.

Employers will be prohibited from offering inducements such as higher salaries or one-off payments. The Department for Work and Pensions (DWP) plans to introduce the ban by making an amendment to the Pensions Bill during the Lords stages. A DWP statement says: "The Pensions Bill 2007 requires automatic enrolment into a qualifying workplace scheme, such as personal accounts, for all workers, between 22 and State Pension age, earning more than £5,035 a year (in 2006/07 earnings terms). Where

workers remain in a money purchase scheme, employers would contribute a minimum of 3% of qualifying earnings, with total contributions of 8% made up through member contributions including Government tax relief.

"The Pensions Regulator will be responsible for enforcement of the prohibition on inducements - as well as its new key role of ensuring that employers fulfil their duties under the Bill, including the requirements to automatically enroll staff into a good workplace pension scheme, and provide the employer minimum contribution of 3%. The ban would come into effect with the introduction of auto-enrolment from 2012."

Where next



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