

Employment Law Bulletin

Inside this issue:

- Family Friendly
- Annual Leave
- Information & Consultation
- Smoking Ban
- Increased Rates

EMPLOYMENT LAW – CONFUSED?

Empire HR can take the worry out of employment law and let you get on with running your business.

Welcome to the April 2007 edition of Empire HR's Employment Law Bulletin. This month the Bulletin will focus on regulations that come into force this month including: provisions under the Work and Families Act 2006; developments under the Information and Consultation Regulations; and the extension of smoking bans throughout the UK. We will also update you on increased statutory rates.

From all of the Empire HR Team, we wish everyone a Happy Easter.

FAMILY FRIENDLY

From the 1st April 2007 there will be new Family Friendly rights, as a result of the implementation of part of the 'Work and Families Act 2006'. We have given details below of these changes as well as reminding you of existing provisions, which will remain unchanged. These are:

Maternity Leave

All employees regardless of length of continuous service are entitled to 52 weeks maternity leave (26 weeks' ordinary maternity leave followed by 26 weeks additional maternity leave). Additional maternity leave begins on the day immediately following the day on which ordinary maternity leave ends.



In order to take up entitlement to maternity leave employees must notify the Company (in writing) by the 15th week before the EWC unless that is not reasonably practicable, of the following:

- that they are pregnant;
- the EWC;
- the date on which they intend their ordinary maternity leave to start; and
- if requested, provide medical evidence of the EWC.

Employees are legally prohibited from working during the 2 weeks immediately after the birth, 4 weeks if they are a factory worker; this is known as the "compulsory maternity leave period" and is considered part of the ordinary maternity leave period.

If employees wish to return to work prior to the end of the additional maternity leave they must give at least 8 weeks' notice of their intended date of return.

Maternity Pay

In order to be eligible for Statutory Maternity Pay (SMP) employees must:

- have been continuously employed for at least 26 weeks ending with the 15th week before the Expected Week of Childbirth (EWC);

FAMILY FRIENDLY

- have average weekly earnings of not less than the figure set by the Government for the payment of National Insurance contributions;
- still be pregnant at the 11th week before the EWC or have given birth by that time;
- give at least 28 days' notice that they intend to stop work;
- provide medical evidence of the EWC.

For the first **6 weeks** SMP is payable at the earnings related rate (equivalent to 90% of earnings) and for the remaining increased period of **33 weeks** at the standard rate as set by the Government. This does cause confusion as the first 26 weeks fall during the period of Ordinary Maternity Leave, whilst the remaining 13 weeks will fall into the Additional Maternity Leave period.

Keeping in Touch Days

This is a new provision introduced. Employees on maternity leave may now work for up to 10 days during the statutory maternity leave period without bringing their maternity leave to an end. Work may include training or any other activity undertaken to assist them in keeping in touch with the work place. Each day that the employee attends work, regardless of the amount of hours that they are in attendance, will count as one full day. Any such work

must be agreed between the Company and the employee. Any "keeping in touch days" shall not have the effect of extending the maternity leave period.

Adoption Leave and Pay

Employees who have an adoption placement on or after the 1st April will have the same rights as employees under the maternity leave provisions.

Flexible Working

Employees responsible for the upbringing of children aged under six or of disabled children aged under eighteen have the right to request flexible working. As of 1st April 2007, this right will be extended to eligible employees who have responsibility for caring for an adult. It should be noted, this will not provide an automatic right to work flexibly as there will always be circumstances when the Company is unable to accommodate the employee's desired work pattern. Full details and guidance in relation to Flexible Working Policies can be obtained from Empire HR.

If Clients have any questions relating to the new Family Friendly rights or require their current policies to be reviewed, they should contact the advice line team for clarification.

Did you know?

Statutory Maternity Pay is 6 weeks at 90% of average weekly earnings and then 33 weeks at the lower statutory rate (£112.75 on 1st April 2007) a week or 90% of average weekly earnings (which ever is lower).

Statutory Paternity Pay is paid for 2 weeks at statutory rate or 90% of weekly earnings which ever is lower.

ANNUAL LEAVE

Regular readers will be aware of the increase in statutory holidays planned for 2007. The statutory minimum will increase from 4 to 4.8 weeks on 1st October 2007. Of note is the fact that employers have no obligation to round up days but cannot round down an employee's holiday entitlement either. So if an employee who starts part way through the year or who works on a part time basis is entitled to 20.4 days, the employer cannot round this down to 20 days.

INFORMATION AND CONSULTATION



The Information and Consultation of Employees Regulations 2004 was introduced to set out minimum rights for employees to be informed and consulted by their employers in respect to a number of workplace issues. These regulations are being implemented in stages, the first was introduced in April

INFORMATION AND CONSULTATION

2005 for employers with 150 or more employees, the latest phase will be implemented on 6th April 2007 and will affect businesses with 100 or more employees. The next stage will have effect from 6th April 2008 and will affect businesses with 50 or more employees.

The Regulations have been drafted to allow employers significant flexibility in establishing methods of informing and consulting employees that suit their particular organisation.

Employers that have 'pre-existing' information and consultation agreements that cover all employees and have been formally approved by the workforce will only have to consider making changes if they receive a request supported by 40 per cent of employees to negotiate new arrangements.

Organisations that don't have formally approved information and consultation agreements may be vulnerable to having the Regulations standard provisions for informing and consulting employees imposed on them if just 10% of employers make a request for new arrangements. Employers in this position will be required to negotiate new arrangements but if agreement can't be reached then the standard provisions apply.

Employers without 'pre-existing agreements' can take the initiative and inform the workforce that they intend to establish new arrangements and negotiate an information and consultation agreement without waiting for an employee request. This allows employers to set the agenda but if negotiations fail and agreement can't be reached then the standard provisions will again apply.

Under the standard provisions employers must inform and consult with their workforce in the following areas:

- Information on recent and probable developments of the undertaking or establishment's activities and economic situation.

- Information and consultation on the situation, structure and probable development of employment, any anticipatory measures that are envisaged, especially where there is a threat to employment.
- Information and consultation on decisions likely to lead to substantial changes in work organisation or contractual relations.

Subjects that might be addressed under 'recent and probable developments of the undertaking or establishment' include profit and loss, sales performance, productivity, structure, divestments, market developments and strategic plans.

'Contractual relations' or decisions likely to lead to substantial changes in work organisation could cover:

- working time and practices
- training and development
- equal opportunity
- health, safety and environment
- pension and welfare issues
- merger and acquisition
- employment plans
- transfer of undertakings
- collective redundancies
- restructuring
- reorganisations
- data protection issues
- outsourcing
- pay

In order to avoid dispute or confusion, employers should ensure that their information and consultation agreements specify precisely the issues that are to be addressed.

The Regulations define consultation as 'the exchange of views and establishment of dialogue' between the employer and employees or employee representatives. Consultation must be timely insofar as the company decision-making process is concerned, with management providing sufficient information to employee

Did you know?

Minimum Wage
Hourly Rates are:
Adult (aged 22 years
or over): £5.35
Development rate (18
to 21 years old):
£4.45
Youth Rate (16 to 17
years old): £3.30

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INFORMATION AND CONSULTATION

representatives, allowing for employee representatives to prepare a study, formulate an opinion, submit it to management, and to receive management's feedback on that opinion, on decisions that are likely to lead to substantial changes in work organisation, or contractual changes.

Employers can contact Empire HR for advice and guidance in regards to information and consultation regulations.

SMOKING BAN



It is now a year since Scotland implemented the smoking ban. The smoking ban extends to all enclosed public spaces and workplaces, including work vehicles. Exemptions extend only to private homes, nursing homes, oil rigs and prisons.

Employers are legally required to display statutory no-smoking signs and will face fines if they fail to do so, or if they allow staff to break the law.

As well as facing fines if employers do

not implement the ban, Companies could also be faced with personal injury claims.

The Smoking ban came into effect in Wales on 2nd April 2007, and will come into effect on 30th April in Northern Ireland and 1st July in England.

The Regulations in the Health Act 2006 create three new offences in England and Wales:

- 1) Failure to display minimum statutory smoking signs.- Fine up to £1,000 or a fixed penalty notice of £200.
- 2) Smoking in a smoke free place- Fine up to £200 or penalty of £50
- 3) Failure to prevent smoking in a smoke free place- Fine up to £2,500

Scotland already has the same three offences within its legislation and similar provisions will be introduced to Northern Ireland.

INCREASED RATES

April will see the increase in some statutory rates:

Statutory Sick Pay- rises to £72.55 per week on 6th April 2007

Lower Rate Statutory Maternity & Lower Rate Statutory Adoption Pay- rises to £112.75 per week (or 90% of average weekly earnings if less) on 1st April 2007.

Paternity Pay – rises to £112.75 per week (or 90% of average weekly earnings if less) on 1st April 2007.

....And as a reminder:

Limit on a week's pay for redundancy purposes – rose to £310 on 1st February 2007

Limit on the compensatory award – rose to £60,600 on 1st February 2007

Please note this update gives general guidance only and should not be regarded as an authoritative or complete statement of the law. You should always seek specific advice for each specific situation.