CHILTERN HR JANUARY 2015 NEWSLETTER

110 Butterfield, Great Marlings
Luton ▪ Bedfordshire ▪ LU2 8DL

T: (01582) 439 795
F: (01582) 439 796
E: philip.ivinson@chilternsolicitors.co.uk
www.chilternsolicitors.co.uk

1. Shared Parental Leave regulations have come into force

On 1 December new regulations regarding Shared Parental Leave (SPL) came into force. The new rules, which apply to couples with babies due or children matched or placed for adoption on or after 5 April 2015, will give parents, who meet the eligibility and notice requirements, greater flexibility in how they share the care of their child in the first year after birth.

Mothers will still have to take two weeks compulsory maternity leave immediately after the birth (or four weeks in the case of factory workers) but after that time couples will have the opportunity to share up to 50 weeks of leave and up to 37 weeks of pay. Similar provisions will apply in the case of adoptions.

Additional paternity leave and pay will no longer be available where a baby is born or a child matched or placed for adoption on or after 5 April so the only entitlement the other parent will have will be two weeks' ordinary paternity leave and pay unless the parents decide to take SPL.

Reference: Shared Parental Leave Regulations 2014; Statutory Shared Parental Pay (General) Regulations 2014.

2. Family friendly reforms

Legislation giving new rights to paternity, adoption and shared parental leave and shared parental pay, to the intended parents of a child born to a surrogate mother came into force on 25 November and 1 December.

From 5 April 2015 the existing parental leave regime will be extended to parents of children aged between 5 and 18.

Also from 5 April 2015, the current right to adoption leave will be extended to those fostering a child under the 'Fostering for Adoption' scheme and couples who are adopting a child from outside of the UK will have the right to shared parental leave and pay.

3. Payment in lieu of untaken holiday

The Employment Appeal Tribunal has held that holiday leave should be taken within the relevant leave year and cannot be carried forward, save where the worker was 'unable or unwilling because of reasons beyond his control to take annual leave and as a consequence did not exercise his right to annual leave'. If a worker is not prevented from taking holiday, then his entitlement to leave and holiday pay, including a payment in lieu on termination of employment, would be lost.

What does this mean?

Previous judgments on the question as to whether a worker is entitled to carry forward holiday have been confined to cases where a worker was unable to take their annual leave due to sickness. The Employment Appeal Tribunal's judgment extends this to other situations where a worker is unable or unwilling to take holiday for reasons beyond his control.

However, if a worker was at work during the periods when they would have taken holiday leave and were in receipt of full pay then it is unlikely that they would be entitled to holiday pay for the same periods as that would amount to a double recovery.

What should employers do?

Employers should give their staff the opportunity to take the holidays they are entitled to.

4. Retrospective holiday pay claims are to be limited

The Government has announced that it intends to introduce legislation to limit retrospective holiday pay claims. If passed by parliament, claims for retrospective holiday pay will be limited to two years.

The announcement follows a recent ruling by the Employment Appeal Tribunal that non-guaranteed overtime must be taken into account when calculating the statutory holiday pay due to a worker under the Working Time Directive.

5. Consultation on the Working Time Directive

The European Commission has launched an online public consultation as part of its review of the Working Time Directive.

All citizens, organisations and public authorities are welcome to contribute to the consultation and contributions can be submitted online by following this link
http://ec.europa.eu/eusurvey/runner/54d2a95e-114a-7edc-217f-5bed8fd02492 .

The consultation closes on 15 March 2015.

6. The Fit to Work scheme

From 1 January 2015 employers will be able to benefit from a new tax exemption, as part of the introduction of the new Fit for Work scheme, where they fund recommended medical treatments of up to £500 per employee per tax year.

The new Fit for Work service, due to be rolled out in some areas in January, is intended to cover the whole of the UK by May 2015. It will provide health and work advice and support for employees, employers and GPs to help people with a health condition stay in or return to work.

The tax exemption will apply if the following conditions are met:

- before the recommendation can be made the employee must have been:
    - assessed as unfit for work for at least 28 days, which includes an assessment that they may be fit for work subject to the employer making arrangements to enable them to return, providing the employee doesn't return before a recommendation for medical treatment has been made; or
    - absent from work due to injury or ill health for at least 28 consecutive days;
    - the assessment must be carried out by a 'health care professional' (a registered medical practitioner, a registered nurse, or a registered occupational therapist, physiotherapist or psychologist);

- the recommendation can only be made by a health care professional and must also:
    - be in writing;
    - be provided to the employee and employer; and
    - specify the required medical treatment.

7. Depression was not reasonably foreseeable

The Court of Appeal has held that an individual was not entitled to compensation for depression as it was not reasonably foreseeable that he would become depressed.

What does this mean?

Normally an employer will not be liable for work related stress in the absence of any prior awareness of a particular susceptibility to stress, as in such circumstances it will not be reasonably foreseeable that depression would result.

However, in exceptional circumstances, an employer's conduct might be so devastating that it is foreseeable that even a person of ordinary robustness might develop a depressive illness as a result.

What should employers do?

Employers should remember that they owe their staff a duty to take care of their health and safety in the workplace and should take steps to minimise work related stress.

8. Obesity can amount to a disability

The European Court of Justice has held that obesity itself is not a protected characteristic but that the impairments which result from an overweight employee could give rise to a disability.

What does this mean?

EU law does not prohibit discrimination on grounds of obesity as such but obesity can constitute a 'disability' where it entails a limitation resulting in particular from long-term physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers. Ultimately it will be for the courts and tribunals to determine whether, in individual cases, those conditions are met.

What should employers do?

Reasonable adjustments should be made for obese workers who meet the above conditions. These may include providing larger chairs or providing car parking spaces close to the work place.

9. Caste can amount to an aspect of race

The Employment Appeal Tribunal has held that the definition of 'race' in the Equality Act 2010, which includes 'ethnic or national origins' , is wide enough to cover caste.

What does this mean?

Despite the fact that caste is not a protected characteristic in itself, a person who is discriminated against on grounds of their caste may be protected by the protected characteristic of race.

What should employers do?

Employers who have ethnically diverse workforces should ensure that their staff and managers are aware that discrimination on grounds of caste will not be tolerated.

10. Employment agencies are to be banned from advertising vacancies exclusively in other EEA countries

From 5 January employment agencies and employment businesses will be prohibited from advertising vacancies for jobs based in Great Britain exclusively in other EEA countries. The ban only applies to employment agencies and employment businesses who operate in Great Britain.

Reference: The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2014.