

What's New & What's Coming Up...

There have been a number of changes recently – and further changes in the pipeline.

We give a quick summary below:

Compensation Levels

In an unprecedented move the maximum compensation for unfair dismissal was reduced on 1st February 2010.

But don't get too excited, the new maximum is £65,300.00 compared with £66,200.00.

In October 2009, the weeks pay for calculating redundancies was increased to £380.00. This increase normally happens in February each year. But we can confirm there has been no further increase this February.

Claims and cost of claims

The number of claims continues to rise. In Oct 09 the Tribunal Service reported that there had been a rise in claims for unfair dismissal of 29%.

This can be understood considering the number of redundancies and other dismissals that have been actioned due to the economic down turn.

ACAS have also reported that the time taken to deal with an employment tribunal claim is, on average, 14 days. This can be a huge distraction for managers – and then there are the costs associated with taking a claim to tribunal... which run into the thousands.

Pre-Claim Conciliation

In April 2009 ACAS launched a new service called 'pre-claim conciliation' (PCC). This allows parties to try to settle matters even before an employee lodges a claim at an Employment Tribunal. This can save a great deal of time and money; and early reports from ACAS have confirmed that the time associated with pre-claim conciliation is approximately 3 days (compared with 14 days – see above) – and often there is no need to get solicitors involved, so costs are kept down.

The service can be accessed by telephoning the ACAS help line.

Maternity and Risk Assessments

In a recent case *O'Neil v Buckinghamshire County Council* the EAT confirmed the preconditions that are needed before an employer has a duty to conduct a risk assessment for a pregnant worker.

1. the employee must have notified her employer that she is pregnant
2. the work must be of a kind which could involve a risk of harm or danger to the H & S of the mother or baby
3. the risk arises from either processes, work conditions or physical chemical or biological agents in the workplace.

Therefore there is no general obligation to carry out a risk assessment. However, if the conditions apply and an employer fails to carry out a risk assessment this can result in discrimination.

So if in doubt carry out a risk assessment....

Holidays and Holiday Pay

Recent cases in the European Courts have left us all a bit bewildered (and frustrated) about holidays and holiday pay.

The European Court of Justice recently confirmed that if an employee is off on long term sickness they continue to accrue holiday – and must be allowed to take the leave when they return to work. This is the case even if the employee's absence crosses over into a new holiday year.

Another case confirmed that if an employee is sick during a period of scheduled holiday then they have the right to schedule their holiday for a later date (provided they have reported their absence as sickness).....and if necessary roll over the holiday to the next holiday year.

So the solution for businesses is to monitor long term absence closely and take action quickly. And to have a clear absence reporting procedure and monitor holiday and absence closely.

Agency Workers Regulations

New regulations have now been published (January 2010) to implement the European Council Directive on temporary agency work.

The Agency Workers Regulations 2010 will not come into force until 1st October 2011, a few weeks ahead of the 5th December 2011 deadline set by the EC Directive.

The regulations ensure that after 12 weeks in a given job agency supplied workers will be entitled to equal treatment on basic working and employment conditions, including pay and holidays, as if they had been recruited directly by the hirer. In addition from the first day of an assignment agency workers will be entitled to information about vacancies in the hirer to give them the same opportunity as other workers to find permanent employment and to equal access to on-site facilities such as child care facilities.

We will be providing further guidance on the new regulations and implications for employers in the next few months...

In the meantime you should review whether you use temps, how often and for how long – to see if you may be affected by the new Regulations.

The Right to Be Accompanied

The right to be accompanied at a disciplinary hearing is limited to being accompanied by a work colleague or trade union official - but not by a lawyer.... Or so we thought!

A recent decision by the Court of Appeal *G R v X School & Ors*, in January 2010 has confirmed that there can be exceptions to his rule.

In this case the CA ruled that the right to a fair trial provided by the Human Rights Act means that a claimant must be given the opportunity to be legally represented at a disciplinary/appeal hearing when that hearing **is determinative of his civil right to practise a profession.**

This confirms a similar decision in a 2009 case involving a doctor who had been refused permission to be represented by lawyers at a

disciplinary hearing (*Kulkarni v Milton Keynes Hospital NHS foundation Trust*).

So while the general rule remains it is no longer an absolute rule. Consideration should therefore be given if an individual asks to be accompanied by a lawyer if the allegations are sufficiently serious and if an adverse finding could have a serious effect on the employee's future employment prospects.

Heyday

Back in September we reported the High Court decision in the Heyday case that confirmed that it is legal for UK employers to force workers to retire at the age of 65.

This is a significant decision so we just want to remind you that on 25th September 2009 the High Court confirmed that it is legal for UK employers to force workers to retire at the age of 65.

The decision has been popular with employers as it enables employers to dismiss employees of retirement age without having to worry about the discriminatory implications or claims for unfair dismissal.

In summary the law still holds that:

- Employers can dismiss a member of staff without redundancy payments on that person's 65th birthday, as long as they follow the correct retirement procedure.
- Employees still have the right to request to continue working beyond the date when the employer wants them to retire, but the employer can refuse the request and the law does not require them to give any reason for that decision.
- An employer can refuse to recruit anyone over the age of 65.

Future Proposals:

The government has announced that it is bringing forward a review of the retirement age to 2010. We will keep you posted of any progress in this area...



Practical HR News February 2010

What's been happening at Practical HR

There has been a lot going on at Practical HR over the last three months ... so here is a round-up of our news...

We have moved..

In mid November we moved to new offices in Great Wakering. We now have lots more space and parking!! If you don't already have it here is our new address:

Practical HR
PHR House
34 Star Lane
Great Wakering
Essex SS3 0PJ

If you are passing, please drop in for a coffee.

New Product – Your HR Services

We have been busy developing our new product 'Your HR Services' and we launched this at the beginning of January

The new product provides you with all your HR documents **on-line**, on your own site.

Employees can access the Employee Handbook section (so you don't have to print anymore handbooks!); and they can book holidays on-line and fill out change of details forms on-line ... so no more bits of paper..

There are also separate areas for Managers and HR. And all your template letters and contracts are stored on the site for easy access.

And we guarantee that all the documents and policies will always be up to date. If there are changes we automatically update the site and then we send an e-mail to every employee to advise them of the change. You don't have to do anything. It couldn't be simpler.

You never have to worry about your documents being up to date again!

Have a look and decide for yourself

If you would like to look at our demo site – you can log-on at:

www.yourhrservices.co.uk/demo

(For a limited period) you can log-in to the different levels by using the following:

Employee

Username: employee
Password: employee1

Manager

Username: manager
Password: manager1

Human Resources

Username: human
Password: human 1

Please note that the log-ins are case sensitive. They will only be available until the end of February (if you want to look at the demo after this please call us for a new log-in).

If you would like to know more, please give us a buzz...

We hope our update has given you a good overview. If you would like any further information about any of the matters raised in this update, please do not hesitate to call us.

Contact Details:

Practical HR Ltd
Tel: 01702 332160
solutions@practical-hr.co.uk

www.practical-hr.co.uk

www.yourhrservices.co.uk

www.yourhrservices.co.uk/demo