

Employment Update - January 2009

For the latest up to date employment information see the online employment manual: www.actsmart.biz/employment

Whilst the pace of employment law is probably set to slow down slightly in the latter part of 2009 as a result of the economic downturn, there are still a number of key developments to watch out for, including:

- Changes to employment tribunal awards
- Increases in statutory minimum holiday entitlement
- Increases in rates for statutory holiday entitlement
- Increases in rates for SMP / SPP / SAP
- Changes to statutory discipline, dismissal and grievance procedures
- National Minimum Wage
- New Safeguarding Vulnerable Groups Act
- New Education & Skills Act
- New Pensions Act

1 February 2009 – Employment tribunal awards

The Employment Rights (Increase of Limits) Order 2008 comes into force from 1 February 2009. The Order increases the limits applying to certain awards of employment tribunals and to other amounts payable under employment legislation. The main increases are:

- Maximum amount of a week's pay for the purpose of calculating a redundancy payment or the basic or additional award of compensation for unfair dismissal or payments to employees in the event of insolvency – increases from £330 to £350.
- Limit on the amount of compensatory award for unfair dismissal – increases from £63,000 to £66,200.
- Limit on the daily amount of statutory guarantee payment – increases from £20.40 to £21.50.
- Minimum basic award for trade union and health and safety related dismissals – increases from £4,400 to £4,700.

The increases apply where the event giving rise to the entitlement to compensation or other payments occurs on or after 1 February 2009. The date is determined differently depending on the type of claim brought. In unfair dismissal and most redundancy payment claims, this date is the effective date of termination of employment. In guarantee payment claims, it is the day in respect of which the payment is due.

1 April 2009 – Statutory minimum holiday entitlement

The multiplier used to calculate statutory minimum holiday entitlement increases from 4.8 to 5.6. For example, a member of staff working a 5 day week calculates holiday entitlement as follows: 5 days x 5.6 = 28 days annual holiday entitlement.

5 / 6 April 2009

Increase in rates of SMP / SPP / SAP for tax year 2009/10

- The weekly rate of SSP will rise from £75.40 to £79.15 from 6 April 2009.
- The standard weekly rate of SMP and the weekly rates of SAP and SPP will rise from £117.18 to £123.06 for payment weeks starting on or after Sunday, 5 April 2009.
- The lower earnings limit for qualifying for SSP, SMP, SAP and SPP will rise from £90.00 to £95.00 per week from 6 April 2009.

Changes to statutory discipline, dismissal and grievance procedures

The statutory disciplinary and dismissal procedures (DDP) and statutory grievance procedures (GP) and the current ACAS Code of Practice on Disciplinary and Grievance Procedures are being abolished by the Employment Act 2008, to be replaced with a 'lighter touch' non-statutory regime based on a brand new ACAS Code of Practice.

The various other provisions of the Employment Act 2008 will come into force, including changes to: enforcement of the national minimum wage (NMW), trade union membership law and ACAS conciliation.

Flexible working

The right to request flexible working will be extended to parents of children up to the age of 16 years.

1 October 2009 – National Minimum Wage

Subject to prevailing economic conditions and the recommendations of the Low Pay Commission, the national minimum wage (NMW) may rise from 1 October 2009. In addition, the government is proposing to amend the legislation to prevent employers from using tips and service charges to top up employees' pay to meet the NMW, but the date of implementation of this is not yet known.

12 October 2009 – Safeguarding Vulnerable Groups

The Safeguarding Vulnerable Groups Act 2006 will introduce a centralized vetting system for employees and will create a single list of people banned from working with children and vulnerable adults. Penalties will be imposed on employers who fail to make the necessary checks.

Education and Skills Act 2008

The Education and Skills Act 2008 received Royal Assent on 26 November 2008. The Act will require 16 and 17 year olds who leave education without achieving a certain level of qualification to participate in accredited training.

For employers, it contains a new obligation to allow 16 and 17 year old employees the equivalent of one day a week off to undertake training (which may be accredited training provided by the employer) and a new duty not to employ such individuals if they have not made appropriate training arrangements.

The new duty to participate post 16 will not start to come into force until 2013 and much of the detail is still to be specified in regulations and guidance. The dismissal of an employee because they attempt to exercise their right to participate in training will be

deemed automatically unfair.

The new rights and obligations contained within the Education and Skills Act 2008 should not be confused with the Government's proposal to give employees in England the right to request time off for skills training once they have worked for their employer for 26 weeks and for the employer to consider such requests seriously (the procedure will be similar to the flexible working request procedure). The Government expects to implement this right in 2010.

Note that young people aged 16 and 17 (and some 18 year olds) already have the right to take paid time off from full-time work for relevant training, depending on their existing qualifications.

The Pensions Act 2008

The Pensions Act 2008 received Royal Assent on 26 November 2008. The Act implements the latest stage of the Government's pension reforms, and there are a number of implications for employment law.

From the date the relevant parts of the Act come into force, expected to be in 2012, employers will have to automatically enrol qualifying employees into a personal accounts scheme or their own qualifying occupational or personal pension scheme, provided it meets minimum standards.

Additionally, employers will have to pay compulsory minimum contributions on behalf of their employees, although these requirements will be phased in over several years. Employers will not be able to ask job applicants at interview whether they plan to opt out of auto-enrolment or offer financial inducements to their employees to opt out. Workers will have the right not to suffer any detriment because of their employer's breaches of the regime.

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Our online employment manual is always updated and covers the following areas:

- **Pre-Employment** - covers the recruitment process so you can get the right people first time. Includes sample application forms and job description templates.
- **Employment** - keep up to date with all the basics of employment law and employee rights.
- **Termination of Employment** - covers issues such as disciplinary hearings, notice rights, fair / unfair dismissals and health / medical issues.

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