

# It's all change on the employment front

**Daniel Barnett** highlights the new employment laws coming into force today, 1 October

Fundamental new employment laws come into force today, which will impact on both employers and employees. The new procedures should be easy to roll into existing employment policies, but the consequence of non-compliance has escalated. All employers must now follow a simple three-stage procedure when dismissing employees, set out in Sch 2 of the Employment Act 2002. In summary, the employee must be told in writing of the reason he is facing dismissal, and the basis for the charge. Next, the employer must invite the employee to a meeting to discuss the matter. And finally, if the employee is dismissed, the employer must offer a right of appeal and hold an appeal meeting.

The procedures are not very onerous. Most large employers will already have policies that largely comply with these rules. The importance is the consequence if an employer does not comply. Any dismissal (assuming the employee has more than a year's continuity of employment) will be automatically unfair. And any compensation the employee recovers (whether for unfair dismissal, or for other claims arising from the dismissal such as discrimination or breach of contract) will be uplifted by between 10% and 50%.

The problems in practice will arise from: (i) A failure to follow these rules with all types of dismissal, such as performance dismissals or redundancy dismissals. Many employers, at present, may not offer rights of appeals in those types of dismissals. (ii) A failure to follow some of the associated steps, such as a requirement that meetings must be held at a reasonable time and in a reasonable location. These vague requirements, if not followed by the employer, may result in a substantial windfall for the dismissed employee. (iii) Complicated rules dealing with when the procedures are deemed completed. If the employer misunderstands these rules and treats the procedures as no longer applying, and a tribunal disagrees, it may find itself liable for automatic unfair dismissal and increased compensation. (iv) Other pieces of small-print, for example these procedures also apply to demotions, reallocation of duties and

imposing performance monitoring periods.

And employees have new obligations. They must take all reasonable steps to attend a meeting, and they must exercise their right of appeal against dismissal. If they fail to do either of these, they will normally face a reduction in unfair dismissal or discrimination compensation—again, of between 10% and 50%.

From today, both current and ex-employees are banned from presenting most types of tribunal claim unless they have first sent a written grievance to their employer and waited 28 days.

The main exception is that ex-employees will still be allowed to present straightforward unfair dismissal claims without putting in a written grievance. But if they are claiming constructive dismissal, sex, race or disability discrimination, or unlawful deduction from wages, they must use the grievance procedure before claiming.

The limitation period for presenting tribunal claims is extended from three months to six months, provided that within the first three months the employee has either lodged a grievance with his employer or (without having lodged a grievance) sent an invalid claim form to the tribunal.

Once an employer receives a grievance letter, he must hold a meeting and offer a right of appeal against his decision. The employee must provide details of the grievance, take all reasonable steps to attend the meeting and (if dissatisfied with the decision) exercise his right of appeal. Any failure to comply with these requirements will result in a 10% to 50% adjustment in any tribunal award (if the employee succeeds in the underlying claim).

Until today, the Disability Discrimination Act 1995 did not apply to employers with fewer than 15 employees. Now it does—the small employer exemption has been abolished. The Act will also now apply to partners of firms and to barristers, as well as to the police force.

There are also some technical, but important, changes to the definition of disability.

A failure to make reasonable adjustments, under s 6 of the Disability Discrimination Act,

can no longer be objectively justified. And there are new definitions of “discrimination”—direct discrimination (less favourable treatment on grounds of disability, which cannot be justified) and disability-related discrimination (less favourable treatment for a reason relating to disability, which can be justified).

Important changes are also made to the national minimum wage. The main (adult) rate for workers over 22 increases to £4.85ph. The “development rate” (for workers aged 18–21 inclusive) increases to £4.10ph. There is a new rate for 16- and 17-year-olds of £3.00ph.

Lawyers should also be aware that the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2004 come into force today. The important changes are: terminology (“claimant”, “claim form” and “response form” replace “applicant”, “originating application” and “notice of appearance”); 28 (not 21) days for the respondent to file his response form, but time runs from the date the response form is sent out (rather than received); early sifting, and default judgment procedure where the claim is uncontested (default judgment can be entered for a money sum, where it can be ascertained from the contents of the claim form, not just for liability with award to be assessed); restriction in ACAS's power/duty to conciliate to 13 weeks from the start of a claim (in most cases), or seven weeks in some cases (eg unlawful deduction from wages, statutory redundancy pay)—and no hearing can take place during this ‘conciliation’ period; substantial, and complex, changes to costs rules, including costs awards for preparation time for (subject to caveats) unrepresented parties, and a power to make wasted costs orders against representatives; if a decision is given verbally at the tribunal, written reasons will not be produced unless requested, and the distinction between “summary” and “full” written reasons is abolished.

These new laws are fundamental and will impact on all employers and employees. The laws are also part of the DTI's new practice, which is to harmonise commencement dates for employment legislation. With just a few exceptions, all employment laws now commence on either 1 April or 1 October.

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