



# RAWORTHS Employment Newsletter

October 2008

## New Season, New Changes.....

### National Minimum Wage Increases with effect from 1 October 2008

Standard (adult) rate **£5.73** per hour (rising from £5.52)

Development rate (workers aged 18-21) **£4.77** per hour (rising from £4.60)

Young Workers' Rate (aged 16 and 17) **£3.53** per hour (rising from £3.40)

### Employers Liability Insurance

The Employers Liability (Compulsory Insurance) (Amendment) Regulations 2008 came into force on 1 October 2008. Employers will no longer have to keep their employer liability certificate for 40 years and the requirement to display an employers liability insurance certificate is altered to say that employers can make the certificate available electronically as long as it is reasonably accessible to relevant employees.

### New rights for those on maternity leave from 5 October 2008

New Regulations came into force on 23 July 2008. They give employees who are due to give birth or adopt on or after 5 October 2008, the right to the same terms and conditions during Additional Maternity Leave (AML) (the second 26 weeks of maternity leave) and Additional Adoption Leave (AAL) as employees currently enjoy during Ordinary Maternity Leave (OML) (first 26 weeks of maternity leave) and Ordinary Adoption Leave (OAL).

In particular, employers should note that employees have the right to receive all monetary benefits except salary under their contracts of employment and will continue to accrue annual leave at the rate specified in the contract throughout the whole of maternity leave or adoption leave.

## Still to come

### From 27 October 2008 Agency Workers

Agency workers are treated as employees of the agency for Statutory Sick Pay (SSP) purposes, but are not entitled to SSP if they are engaged on contracts of less than three months. They are currently the only group of employees not entitled to SSP. The Fixed Term Employees (Prevention of Less Favourable Treatment) (Amendment) Regulations 2008 will remove this exception so that all agency workers will be entitled to SSP from 27 October 2008.



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## Consultations

### Consultations on flexible working for parents of children up to the age of 16

Government consultation on extending the right to request flexible working has now taken place and is due to close on 18 November 2008. Currently, qualifying employees can request flexible working in order to care for a child under six years old, a disabled child under 18 years old or a person aged 18 or over who is in need of care and is a spouse, civil partner or partner of the employee or a relative of the employee or lives at the same address as the employee.

A recent review carried out by Imelda Walsh (HR Director of Sainsburys) recommended that the right to request flexible working be extended to those with parental responsibility for children up to the age of 16. The review also recommended that the extension be implemented in one go, not phased in. The Government intends to introduce the changes in April 2009.

## Case Round-up

### Retirement Age

Under the current Employment Equality (Age) Regulations 2006, employees aged 65 or over cannot claim that their dismissal was unlawful age discrimination where the reason for dismissal is retirement. On 3 July 2006, Age Concern challenged the UK law and argued that it was not compatible with the Equal Treatment Framework Directive. The Advocate General (a senior legal adviser to the European Court of Justice) has now given his "opinion" and backed the current UK law in the case of *The Incorporated Trustees of the National Council for Ageing (Age Concern England)-v-Secretary of State for Business, Enterprise and Regulatory Reform*.

Some 260 people in Britain have cases which have been placed on hold at employment tribunals which will be continued only when we have the EJC's ultimate decision. The Advocate General's opinion is not binding but is usually an indication of the Judge's decision when the European Court of Justice hearing takes place in early 2009. Watch this space for further up-dates!!

### Advertising for a five-year qualified teacher amounted to age discrimination

In *Rainbow-v-Milton Keynes Council*, the Tribunal held that an advert stating that a teaching vacancy "would seek candidates in the first five years of their career" constituted indirect age discrimination. The criterion potentially put the Claimant who is aged 61 at a disadvantage. The case emphasises the need for employers to consider carefully the implications of recruitment advertisements in terms of age discrimination.

If you have any questions please contact:

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**N.B.** ... this newsletter is intended to provide general information, it is a general statement of law and not applicable to any particular individual or set of circumstances. Please contact us for individual advice.