



RAWORTHS LLP EMPLOYMENT NEWSLETTER August 2006

Happy Anniversary Fixed Term Contracts!

10 July 2006 saw the four-year anniversary of the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002. The significance of this is that as of 10 July 2006, fixed-term contract employees with four or more continuous years' service (either through one contract or a series of contracts) will, automatically, become permanent employees, unless there is an objective justification for their continued engagement on a fixed-term basis.

In practice, these Regulations have little significance because the expiry of a fixed-term contract is as much a dismissal as a straight sacking if you do not follow the correct procedure. However, be warned, employers must give the employee a statement of their terms and conditions of employment within one month of the fourth anniversary! This will include information on the length of notice periods required as opposed to an expiry date (as under a fixed-term contract). Failure to provide such a statement could result in a Tribunal award of two to four weeks' pay.

Challenge to Age Regulations

Anti-age discrimination regulations come into force on 1 October 2006. The Regulations permit employers to retire employees at 65, **PROVIDED** the correct procedure is followed. Heyday, a non-profit making organisation associated with Age Concern, has lodged a Judicial Review application challenging the legality of this provision on the basis that it does not comply with EU law. Watch this space for further developments.....

Disability Discrimination

The key, as always, is consultation and consideration! Following a recent Tribunal decision in which a visually-impaired veterinary nurse won her claim for direct disability discrimination, employers must take care not to make assumptions about the effects of an employee's disability.

The employer in this claim had made stereotypical assumptions about the employee's sudden blindness and the likelihood of her returning to work, without consultation with the employee or obtaining medical evidence. The employer even went as far as issuing her with her P.45 two days after she was informed of her condition and back-dated it to three days' before!

It is vital that when dealing with disabled employees, employers give consideration to all relevant circumstances, including making proper enquiries as to what reasonable adjustments could be made, by consulting with the employee and obtaining medical evidence.

Flawed Disciplinary Procedures

The Court of Appeal has overruled earlier case law by deciding that an internal appeal hearing can remedy earlier flaws in the disciplinary procedure (which might otherwise make a dismissal unfair). The key issue is whether the procedure was 'fair' overall. This can be done by way of a complete re-hearing or just a review. However, a breach of the Statutory Dismissal Procedures is the exception to this because it cannot be 'cured'. A breach could render a dismissal automatically unfair. So if you don't understand the process to be followed, contact us for clarification.

Directors be aware – Personal joint and several liability!!

Do your directors and managers lead by example to ensure a non-discriminatory work environment? If not, they may be leaving themselves personally exposed to joint and several liability with the company in sex discrimination claims.

Under the Sex Discrimination Act 1975, any person who "knowingly aids" another person to discriminate on the grounds of sex, may be held liable for that discrimination, as decided by the Court of Appeal in the recent case of *Gilbank-v-Miles*. It held that Ms Miles, a director and major shareholder of a hairdressing salon was jointly and severally liable with the salon (as the employer) for discrimination against the employee. The employee was awarded compensation of £25,000!!!

Work and Families Act 2006

The Work and Families Bill received Royal Assent on 21 June 2006. The Act will:-

- Abolish the current 26 weeks' service requirement for an employee to claim additional maternity leave (i.e. regardless of an employee's length of service, she will automatically qualify for additional maternity leave).
- Extend Statutory Maternity and Adoption pay to nine months, with the intention of increasing this to 12 months by 2009/2010.
- Extend the amount of notice mothers (who wish to return early from maternity leave) must give their employer from 28 days to eight weeks.
- Allow fathers to take over the mother's unused leave and statutory pay where the mother returns to work after six months but before the end of her full entitlement.
- Introduce 'keeping in touch' days whereby an employee on maternity leave can agree to work up to 10 days during the statutory leave period, without losing their rights to leave or statutory pay.
- Extend the right to request flexible working to carers of adults from 6 April 2007.

The Act will come into force on 1 October 2006, with the amendments taking effect in relation to employees whose expected week of childbirth, or expected date of adoption, is on or after 1 April 2007.

If you want to know more about Age Discrimination or the Families Bill, both of these issues will be dealt with at our forthcoming seminars on 11, 12 & 13 September. To reserve your place, please contact:

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