

# A look at the year ahead...

In common with every other year, there are a number of key items on the UK employment law and risk agenda in 2010. Here are our key issues for the year.

## Employment law:

### **1. Increase in the Default Retirement Age... or will it be abolished?**

The current Default Retirement Age (DRA) stands at 65. In October 2009, following the Heyday case, the Government began a public consultation on the DRA. It is expected to increase.

At present employers can continue to use the default retirement age of 65 but remember the statutory retirement procedures and the risk of Age Discrimination. The consultation period ends on 1 February 2010.

An amendment to the Single Equality Bill (see 2 below) has also been tabled in the House of Lords to remove the DRA altogether.

### **2. Single Equality Act**

The much trumpeted Single Equality Act consolidates all current equality laws into a single piece of legislation. Changes in the draft bill include:

- Employers will be explicitly liable for failing to prevent harassment by third parties.
- Expanding the concept of positive action to allow employers to recruit or promote someone from an under-represented group where they have a choice between two or more "equally suitable" candidates.
- Introducing the concept of a discrimination claim based on two combined characteristics where there may not be enough evidence to prove discrimination based on one characteristic alone.
- Introducing an "occupational requirement" defence across all protected characteristics and removing the job-specific "genuine occupational qualifications" in sex, gender reassignment and race cases.

Will the Act see the light of day if there is a change of government at the election? It depends on the progress of the bill, but it is debatable.

### **3. Equal rights for agency workers**

Under the EU Agency Workers Directive, Britain's 1.3 million agency workers will have the right to the same pay, holidays and basic conditions of employment as permanent staff doing the same kind of work after serving a twelve-week service qualification period. However the Directive needs to be implemented locally. As with all proposed legislation on the agenda, the proposed bill is dependent on the election. Currently, the regulations are expected to be finalised in the first half of 2010 prior to the election, with the current government intending to delay implementation until October 2011 (the directive must be implemented by December 2011). This opens the way for further change in the event of a change in government.

### **4. Fit notes replace sick notes**

Under the Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) Amendment Regulations 2010, 'sick notes' will become 'fit' notes in April. The Regulations also allow doctors to state whether an individual is fit to carry out their job, able to carry out some work or no work at all. Doctors will be able to comment on whether a sick employee could return to work on adjusted terms such as altered hours, amended duties and workplace adaptations, and advise on ways to get them back to work sooner, rather than simply declaring that they are unable to work.

### **5. Additional paternity Leave**

Additional paternity leave will be introduced in April 2010, but it will only apply to parents of babies born on or after 3 April 2011. Under the new law, mothers would be able to transfer the final 26 weeks of their maternity leave to the father once the mother has returned to work.

## 6. Usual suspects I - Statutory payments

The standard rates of statutory maternity, paternity and adoption pay increase from £123.06 to £124.88 per week from 4 April 2010. Statutory sick pay, which normally increases on 6 April, will continue at the rate of £79.15 per week. The national minimum wage may rise on 1 October 2010, subject to the prevailing economic conditions and the Low Pay Commission's recommendations to be delivered to the government in February 2010.

## 7. Usual Suspects II - Unfair Dismissal and tribunal awards

Where a dismissal occurs on or after 1 February 2010, the maximum unfair dismissal compensation award decreases from £66,200 to £65,300 reflecting a -1.4% change in the Retail Prices Index. The amount of a week's pay used for calculating statutory redundancy pay will remain at £380 and will not change in February 2010. It will instead be reviewed from February 2011.

## 8. Time to train initiative

Under the Apprenticeships, Skills, Children and Learning Act 2009 employees will have the legal right to request unpaid time off for training. The right to request time off will become law on 6 April for employers with 250 or more employees and will be extended to cover all employers from April 2011.

Initially, this right will apply only to employees with at least six months' service who can demonstrate that the training will improve the effectiveness of their work and the performance of their employer's business. Employees will have to make a written request to ask for time off to undertake external training or study and explain how this training will improve both their personal performance and that of their employer's business. If the employer cannot allow the time off it must have a good business reason(s) for not accepting the request. These follow the list of reasons for rejecting flexible working, for example, the burden of additional costs or the effect on quality of work, performance or customers. It will also be able to turn down a request if it believes that the training will not improve personal or business performance. The employee may appeal the decision.

## 9. Independent Safeguarding Authority

Commencing November 2010, new workers and those moving jobs who want to work with children or vulnerable adults must register with a centralised vetting system, the Independent Safeguarding Authority.

## 10. Union rights

The Government plans to outlaw 'blacklisting' of workers for their union membership or activities this year.

### Risk:

There are many items on the agenda, such as REACH and WEEE changes to coroners rules, but we think that there are three that are particularly pressing:

### 1. Occupational Road Risk

*"Considering the human, legal and economic implications.... it is clear that managing occupational road risk may be the greatest Health and Safety issue you (as an employer) face".*

RoSPA

8 million people drive on company business every day

- 250 of them are seriously injured every week
- 20 employees die every week

It is estimated that 1 in 3 people injured or killed on the roads each year were 'at work' at the time. This makes work-related road accidents the biggest single safety issue for most UK businesses. In fact, car and van drivers who cover 25,000 miles a year as part of their job are at greater risk of being killed at work than those working in construction or agriculture, and the same as those working in quarrying and mining.

To reflect this situation, there are fundamental changes being made by the Health and Safety Executive. In the past, if an employee caused death or injury whilst driving on company business they were personally prosecuted. Now, if an employer hasn't taken adequate 'duty of care', the individual ultimately responsible, usually a director, or line manager, can also be prosecuted and imprisoned for Corporate Manslaughter.

If one of your employees has an accident during working hours, as an employer you can expect questions from the police enquiring as to :

- How long your employee had worked that day.
- Whether they were taking medication that could affect their driving.
- Whether the vehicle was insured for business use.

- Whether the vehicle was maintained according to the manufacturers service schedule.

Organisations need to have a clear understanding of the risks involved when employees are driving for work-related purposes and ensure that they extend the arrangements which they should already have in place to deal with other aspects of health and safety, to road safety performance.

HSE guidance states that employers have duties under health and safety laws to assess these risks and take 'reasonably practicable' steps to ensure 'safe systems of work';

To ensure that your organisation has the capacity to address occupational road risk you should ensure that:

- clear corporate Occupational Road Risk goals and objectives are communicated throughout the organisation;
- key people are trained and made accountable for achieving such goals;
- there is a planned approach to reducing risk (informed by risk assessment and supported by standards, targets, and timescales);
- there is effective monitoring of both management and driver performance; and
- the organisation is committed to periodic performance review to feed back lessons learned and address weaknesses.

We can, of course, assist with these issues.

## 2. Occupational Fire Risk

Many fires can be avoided by taking fire precautions. If a fire does break out, the effects can be minimised by having effective controls and procedures in place.

The Regulatory Reform (Fire Safety) Order 2005 (FSO) came into effect in October 2006 and replaced over 70 pieces of fire safety law replacing most existing fire safety legislation. Fire certificates are no longer required, and the emphasis is on preventing fires and reducing risk.

Anyone who has some control over premises must take reasonable steps to reduce the risk from fire and make sure people can safely escape if there is a fire. The regulations apply to all non-domestic premises. The introduction of these regulations has meant that the issue

of Occupational Fire Risk is now high on the agenda for prosecution. In June 2009 Shell International was fined £300,000 and ordered to pay costs of £45,000 following a guilty plea to breaches of the Regulations. A prohibition notice was also issued. Ad hoc visits from the Fire Authorities should be expected.

## 3. Occupational Health

Work related occupational health damage is a far greater problem than occupational accidents. Some 400 people die annually as a result of notifiable occupational accidents, but perhaps as many as 10,000 die as a result of past exposure to harmful working conditions (several thousand due to exposure to a single hazardous agent, asbestos).

HSE estimates that there are 2.1 million cases of ill health every year caused or made worse by work. Some 25,000 people leave the workforce annually due to work related injury or ill health.

Two central themes in the HSE's 'Securing Health together' strategy are:

- that occupational health must henceforth not just be about preventing health damage but also promoting good health and welfare; and
- that health at work must in future involve everyone, employers, unions, safety and health professionals, 'intermediary' organisations and not least employees themselves.

Addressing health at work is seen as having a major contribution to make in achieving the goals set out in the Government's plans for improving public health generally.

It is the role of people involved in the health and safety industry to keep workers free from harm. As such the issue of Occupational Health is also high on the HSE agenda.

If you have questions or comments in relation to any of these issues please contact **Michelle Haste**, [Mhaste@crowell.com](mailto:Mhaste@crowell.com), +44 (0)20 7413 0070 or **Anne Davies**, [Adavies@crowell.com](mailto:Adavies@crowell.com), +44(0)20 7413 1345. If you have not yet joined the HR Club and would like to do so please email [HRClub@crowell.com](mailto:HRClub@crowell.com) to receive updates and invites to future events.

The contents of this briefing are not intended to serve as legal advice related to any individual situation. This material is made available from Crowell & Moring for informational purposes only.