



# creative leadership

talent management

## Employment Law Update – Changes that affect your Talent Management

September 2009

If you're an employer or HR representative responsible for Talent Management in your workplace, here's a round up of the latest changes in Employment Legislation that you should know about:

### **The National Minimum Wage Regulations 1999 (Amendment) Regulations 2009**

**Effective from 1 October**

#### **What does it mean?**

These regulations implement the annual increases in the National Minimum Wage hourly rates. The main rate will increase from £5.73 to £5.80. The development rate (for workers aged 18 to 21) rises from £4.77 to £4.83, and the youth rate (for 16- and 17-year-olds) from £3.53 to £3.57.

#### **Impact:**

The government estimates that nearly one million workers will be affected by these increases. Because the rises are so modest it thinks the net cost to employers will be negligible, as average earnings are likely to show a larger increase.

**Gillie Scoular, partner, Mills & Reeve**

### **Work and families (Increase of Maximum Amount) Order 2009**

**Effective from 1 October**

#### **What does it mean?**

The maximum weekly amount for calculating unfair dismissal and redundancy payments increases from £350 to £380. The limit is normally adjusted each February in line with the RPI and this has always led to a rise. The current RPI would, however, most likely have led to the limit remaining the same or falling to £340.

#### **Impact:**

The limit of £380 will remain in place until February 2011. This increased level of termination liability will have an adverse financial effect on employers who are struggling more than ever in the current economic climate.

**Kate Holbrook, associate, Dechert**

## **Data Protection (Notification and Notification Fees) (Amendment) Regulations 2009**

**Effective from 1 October**

### **What does it mean?**

Under a new two-tier structure public authorities and private organisations that have been in existence for more than one month, have annual turnover of at least £25.9m and have 250 or more employees (Tier 2 organisations) will be subject to a £500 registration fee. The previous flat fee of £35 will still apply to all other, Tier 1 organisations. Charities and small occupational schemes will always fall into Tier 1 regardless of size and turnover.

### **Impact:**

The aim is to ensure the fee structure is fairer, reflecting the resources invested by the ICO in regulating larger organisations. It will result in a significant increase in fees for these larger organisations, with a particular impact on group companies where there is often more than one data controller within the group.

**Catriona Aldridge, solicitor, Dundas & Wilson**

## **Tips: National Minimum Wage Regulations 1999 (Amendment) Regulations 2009 prevents tips being included in minimum wages**

**Effective from 1 October**

### **What does it mean?**

This will change the way that tips, service charges and tronc payments are treated for NMW purposes. Troncs operate where tips are centrally pooled and then distributed by an employee appointed as troncmaster.

### **Impact:**

Employers will not be permitted to take into account any gratuity payments paid to workers when assessing whether the NMW is being paid, irrespective of whether they are paid directly to the workers, paid by the employer through its payroll or paid through a troncmaster. Employers should therefore ensure that their basic wages rates comply with the NMW without any service charges or gratuities being taken into account.

**James Williams, partner, Archon**

## **Police Act 1997 (Criminal Records) (NO 2) Regulations 2009, Effective from 12 October**

### **What does it mean?**

The regulations make changes to the process of issuing certificates by the Criminal Records Bureau (CRB) and introduce a new Vetting and Barring Scheme (VBS). The latter scheme was established under the Safeguarding Vulnerable Groups Act 2006 (see below). The VBS will become the first centralised system for those working with children and vulnerable people.

### **Impact:**

Employers and those working in the voluntary sector therefore will have to carefully review and identify who carries out tasks that could be covered by the VBS. They must ensure they carry out enhanced checks now and that any new employees, those moving jobs and volunteers will be ISA registered.

**Pam Loch, founder, Loch Associates**

## **Safeguarding Vulnerable Groups Act 2006**

**Effective from 12 October**

### **What does it mean?**

The Act introduces a centralised vetting system for people working with children and vulnerable adults. The new Independent Safeguarding Authority (ISA) will be operational from 12 October 2009. Employees and volunteers will need to apply to register with the ISA and will be assessed using data gathered by the Criminal Records Bureau. Only ISA-registered persons can undertake regulated activity, involving frequent or intensive contact with children or vulnerable adults. Employers who employ an unregistered person could be imprisoned or fined up to £5,000. Registration and checking will become mandatory in November 2010.

### **Impact:**

Employers need to review their recruitment procedures to ensure that the necessary checks are carried out and to prepare for vetting all their existing staff. In addition, employers will need to put in place policies governing the information which will be provided to the ISA. The biggest potential problem with the ISA is likely to be delay. In 2004 a backlog of CRB applications caused chaos in the education and childcare sectors. The introduction of the ISA could see this repeated on a larger scale.

**Mary Clarke, employment partner, DLA Piper**

**If you're worried about how these changes might affect your business, call us for a free consultation today on 01202 853647 or visit [www.creative-leadership.co.uk](http://www.creative-leadership.co.uk).**

### **Source**

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