

ARTICLE: What to look out for in 2010

January 2010

Introduction

There are due to be many changes in employment law during 2010. We have summarised below the potential highlights.

Legal developments

The Equality Bill is due to receive Royal Assent in April 2010. Its aim is to harmonise, consolidate and strengthen the current laws. It is anticipated that it will come into force in October 2010.

The Bill proposes some interesting changes to existing law. There is to be a greater focus on transparency for equal pay, the possibility of positive discrimination where an employer is faced with two equally qualified candidates, and the introduction of the concepts of "association" and "perception" for direct discrimination and harassment.

Our previous article with details on the Equality Bill can be found at:
http://www.davidsonlargelaw.com/downloads/jun09employment_bill.pdf

The Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) Amendment Regulations 2010 will introduce "fit notes" to replace existing sick notes. The focus of previous sick notes was on what an employee could not do. The new fit notes will enable the doctor to give more information and state whether the patient is able to undertake his or her normal work, only some work or no work at all. There will also be more and wider options for referral of the patient to help them get back to and remain in work.

Our previous article examining the proposed fit notes is available at:
<http://www.davidsonlargelaw.com/downloads/jul09fitnote.pdf>

Under the Safeguarding Vulnerable Groups Act 2006, those individuals working in a regulated activity (involving contact with children or vulnerable adults) will have to register with the Independent Safeguarding Authority (ISA). Workers moving jobs or starting a new job from July 2010 onwards will have to register, and registration will be mandatory for all workers from November 2010.

To see our previous article on a relevant case and the SVGA 2006, please go to:
http://www.davidsonlargelaw.com/downloads/mar09_wright_and_pova.pdf
Full guidance can be found on the ISA website at: <http://www.isa.gov.org.uk/>

Although not due to take effect until 3 April 2011, the proposals for additional paternity leave will require businesses to consider and amend their parental leave policies. Currently, a mother can take up to 52 weeks maternity leave. It is proposed that, after the first six months of the child's life, the mother can transfer her leave to the father.

Our summary of the proposals can be found at:
http://www.davidsonlargelaw.com/downloads/nov09government_consultations.pdf

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The Government has moved its review of the default retirement age (DRA) from 2011 to 2010. Currently, the DRA is 65 years and applies where a company does not have a normal retirement age set by contract or custom and practice.

This was sparked by the outcome of the Heyday case, where the ECJ held that provisions requiring retirement at a specified age must be justified by social aims. When the case came back to the High Court, it was held that the national provisions were not in contravention of EU law. However, the judge commented that the arguments against a DRA are compelling and in the current economic climate, it was not likely to stand up to future legal challenges. As such, the government decided to bring forward the review. The government has now launched the consultation which closes on 1 February 2010.

To read our comments on the ECJ case, go to:

<http://www.davidsonlargelaw.com/downloads/apr09heyday.pdf>

while the link to the government's consultation document is here:

<http://www.hmg.gov.uk/media/33830/fullreport.pdf>

Notable cases

Towards the end of 2009, the Employment Appeal Tribunal (EAT) upheld a Tribunal decision that a person's belief in climate change could constitute a philosophical belief in some circumstances. As such, it could be capable of protection under the Employment Equality (Religion or Belief) Regulations 2003.

In 2010, the case will proceed to a substantive hearing to decide whether the claimant was indeed discriminated against.

A review of the case so far can be found at:

http://www.davidsonlargelaw.com/downloads/jan10environmental_belief.pdf

A case that has made headline news is that of Ms Eweida, the Christian employee of British Airways who claimed that she had been unlawfully discriminated against. Ms Eweida had worn a necklace with a cross and BA had insisted that she wear it beneath her clothes so as not to conflict with BA's uniform policy. Both the tribunal and the EAT held that wearing a cross was a personal decision of the individual and not a requirement of the Christian faith.

Furthermore, Ms Eweida was not able to show that any Christians had been placed at a particular disadvantage – such as being denied employment or failing to progress their career because of the policy. However, both the tribunal and the EAT felt that, if Ms Eweida could show that Christians had been placed at a particular disadvantage, then BA would not be able to objectively justify their policy. The Court of Appeal ruling will be eagerly anticipated.

Another anticipated Court of Appeal case is that of Ms Ladele, a Christian registrar who refused to undertake civil partnership ceremonies because such same sex unions went against her Christian beliefs. Her employer, the Council, dismissed her claiming that she could not effectively pick and choose which ceremonies she performed. Both the tribunal and the EAT held that this had been a fair dismissal and did not amount to indirect discrimination. The case has now gone to the Court of Appeal.

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In the current economic climate, employers are trying to keep down their employee costs. Some employers have even gone so far as to prematurely dismiss employees approaching their pension in an effort to avoid the subsequent costs of the pension. One such case is that of Mr Woodcock who was dismissed by Cumbria Primary Care Trust without a proper redundancy consultation. The dismissal was held to be justified but it is anticipated that this may be overturned on appeal since the outcome does not sit well with previous case law. In addition, the Court of Appeal is due to hear the case of Mr Wooster in May 2010 who was also dismissed by his employer to avoid paying an early retirement pension.

To read our note on this case of Wooster, please go to:

http://www.davidsonlargelaw.com/downloads/jan10early_pension_discrimination.pdf

The availability of legal representation for disciplinary proceedings has been before the courts in 2009. The Court of Appeal is due to give its reserved judgment on the case of *R (on the application of G) v Governors of X School* early next year. G was accused of having an inappropriate relationship with a child and claimed that denying him the right to a solicitor in his disciplinary proceedings was against his article 6 rights.

To read about a similar, recent case on this matter and the decision of the High Court in *R (on the application of G) v Governors of X School*, please go to:

http://www.davidsonlargelaw.com/downloads/nov09doctor_and_legal_rep.pdf

If you would like further information on what changes might affect you in 2010, please contact David Hill at dhill@davidsonlarge.com or Lucy Bond at lbond@davidsonlarge.com.

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