



## CAMERON RIDDELL ASSOCIATES LIMITED

*Professional HR and Business Support Specialists*

### BI – MONTHLY NEWSLETTER

#### **Employment Update January 2012:**

##### **New National Minimum Wage Rates:**

21 and over £6.08 per hour  
18-20 - £4.98 per hour  
16-17 - £3.68 per hour

Apprentice rate is £2.60 per hour – this applies to apprentices under 19 or 19 and over in the first year of their apprenticeship.

**Statutory Sick Pay** is £81.60 per week  
**Statutory Redundancy Pay is currently capped at £400.00 per week. \* Cap increases to £430.00 per week from 1<sup>st</sup> February.**

- **Maternity/adoption pay:**  
**SMP/SAP** is paid for 39 weeks.  
Pay rate for the first six weeks of **SMP:** 90% of the employee's average weekly earnings  
**SMP remaining weeks/SAP:**  
£128.73 or 90% of average earnings, whichever is less.
- **Paternity/partner's pay:**  
**SPP** is paid for two weeks.  
£128.73 or 90% of average earnings, whichever is less.

Maternity leave/pay can now be transferred from the Mother to the Father after the baby reaches 20 weeks old for further details on how this works in practise please give a call. Leave can also transfer between adopting parents.

#### **Welcome to our January 2012 Newsletter.**

Happy New Year – we hope that 2012 will be a prosperous one for your business.

From listening to your feedback we have decided that from 2012 the Newsletter will be produced bi-monthly rather than monthly. Feedback from some of our clients said bi-monthly would be better as they are bombarded with information and would rather read a comprehensive version every two months than a shorter monthly version. If you have a different view to those clients please let us know.

As always there is lots of new legislation bubbling away just waiting on the final tweaks before they come into force in April.

There are various topics covered in today's newsletter regarding the changes in April but as always we will keep you up to date with the progress and what's in and what's out.

The thing to note for February is the changes to "a week's pay" this has increased the awards in the tribunal but most importantly it raised the statutory redundancy cap from £400.00 per week to £430.00 effective 1<sup>st</sup> February.

The other important changes are the proposal to increase the right to claim unfair dismissal from one year's service to two years service.....however watch this space there are still decisions being made on how and who that will affect, and of course the second important issue is the pension legislation changes due in October.



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### **Articles of Interest:**

#### **WHAT CAN WE EXPECT IN 2012?**

##### **Increase in Employment Tribunal Award Limits**

As of 1 February 2012 the position will be as follows:-

- ✚ Maximum unfair dismissal compensatory award £72,300 (increased from £68,400)
- ✚ Maximum week's pay £430 (increased from £400 -- this figure is used for calculating Statutory redundancy payments and the basic award in an employment tribunal)

This now means that the maximum unfair dismissal award will be £85,200 (maximum basic award plus maximum compensatory award).

There will however still be no limit to the amount that can be awarded for unfair dismissal for certain health & safety and whistle-blowing reasons. In addition, there is no limit to the amount that can be awarded for discrimination claims.

##### **Family Friendly & Sick Pay Rates**

From 9 April 2012, statutory sick pay will increase to £85.85 from £81.60 and statutory maternity, paternity, additional paternity and adoption pay will increase to £135.45 from £128.73.

##### **Increase in National Minimum Wage**

Although this has not yet been announced, in keeping with previous years it is expected that the National Minimum Wage will increase with effect from 1 October 2012.

##### **Pension Changes**

October 2012 sees the implementation of auto-enrolment for pensions. Although auto-enrolment commences on 1 October 2012, duties upon employers will be staggered over four years, starting with large organisations. Once auto-enrolment is implemented, all employers will be required to automatically enrol eligible job holders into an appropriate pension scheme.



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### **Future News:**

#### **Employment Law Reform**

**The main topic of employment law conversation for 2012 will likely be the many reforms proposed by the Government. The main changes proposed include increasing the qualifying period for unfair dismissal claims from one to two years, allowing (or certainly making it easier for) employers and employees to have frank discussions about any employment issues, and a revamp of the Employment Tribunals system.**

#### **Qualifying Period for Unfair Dismissal Claims**

The qualifying period for raising a claim of unfair dismissal is set to increase from one to two years from April 2012. However, it is important to note that some claims for unfair dismissal do not require a year's continuous service and certain claims will still be capable of being brought from day one of the employment relationship. Dismissals relating to discrimination, whistle-blowing, exercising certain statutory rights, and health & safety-related reasons are not covered by the qualifying period and claims can be brought from the outset of the relationship – this will not change from April.

#### **Fees**

Consultation has begun on proposals to introduce a fee structure in the Employment and Employment Appeal Tribunals.

Currently, Claimants are not required to pay to raise a claim or an appeal with the Employment Tribunals or the Employment Appeal Tribunals Office. The current consultation seeks views on two proposed fee charging schemes:

Firstly, that the level of fees charged will depend upon the nature of the claim and the stage proceedings reach. Two fees would be payable by the Claimant, one at the time the claim is lodged and the second for claims proceeding to hearing. For single claims, the initial fee would be between £150 and £250 and the hearing fee would be between £250 and £1250 depending on the type of claim. Once a claim has been accepted, six further fees would be charged for certain specified applications, for example a request for written reasons or a counterclaim.

The second proposal is that one main fee would be paid by the Claimant when the claim is raised, regardless of whether or not the claim progresses to a hearing. For a single claim, it is proposed that the fee would range between £200 and £1,750 depending on the amount being claimed. As above, six further fees for certain applications would be payable. It is



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proposed that for those Claimants seeking an award of over £30,000, the fee would be substantially higher than for Claimants who were seeking a significantly lesser sum.

For the Employment Appeals Tribunal the fee structure proposed is similar to option one above, with the proposed initial fee being £400 with a hearing fee of £1,200.

The consultation, which closes on 6 March 2012, seeks views on the proposal that the fees could be reimbursed by the unsuccessful party to the successful party should the Tribunal consider this to be appropriate.

### **Costs Awards and Deposits**

Currently Employment Tribunals may award up to £10,000 in costs (or expenses in Scotland) against the unsuccessful party at a hearing, although this is rarely exercised in practice. It is proposed that, from April, the maximum amount of costs which could be awarded by the Tribunal will increase to £20,000.

If an Employment Judge considers that all or part of a claim (or a response) has little reasonable prospect of success, he or she may make an order requiring that party to pay a deposit of £500 or less as a condition of being permitted to continue to take part in the proceedings. As part of the reform, from April the amount of deposit a Tribunal can order a party to pay will increase to £1,000.

### **Panel Members**

Unfair dismissal hearings are heard by an Employment Judge and two lay members. From 1 April 2012 an Employment Judge will hear unfair dismissal cases alone unless the Employment Judge directs otherwise. This change will be reviewed after a year in order to see how successful this is in practice.

### **Witnesses**

Currently, witnesses can apply to the Employment Tribunals Office to be reimbursed for the expenses incurred in attending a hearing. From April, this procedure will be withdrawn and the Tribunal will be able to direct parties to bear the cost of witness attendance, including the cost of witnesses called by the successful party.

Another change to come into force in April is in relation to witness statements. This will apply to Tribunals in England and Wales where it is standard practice to use witness statements at hearings. From April, witness statements will be taken as read at the Employment Tribunal unless directed otherwise by a Judge. The position in Scotland will



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remain unchanged as witnesses are usually required to give oral evidence without the use of witness statements.

### **ACAS Conciliation**

It is also proposed that prior to submitting a Tribunal claim, a Claimant will require to submit details of their complaint to ACAS. Parties would then be offered pre-claim conciliation for a period of one month. In terms of time limits, if both parties agree to enter into pre-claim conciliation then effectively the three month time limit for submitting claims will be paused and the Claimant will have a month after the conclusion of pre-claim conciliation to present their claim to the Tribunal.

### **Flexible Working**

With regard to parental leave this will increase from 13 weeks to 18 weeks, possibly as early as April. In addition, the Government are proposing extending the time period in which this must be taken by. At present the leave must be taken before the child reaches the age of five. Remember though that unless the contract of employment says otherwise this time off is unpaid.

It is also proposed that the right to request flexible working is extended to all employees who have 26 weeks' continuous employment, regardless of whether or not they have children. Under the proposals, employers would be under a duty to consider requests 'reasonably'. A time frame has not been suggested in relation to this flexible working change, and this remains a proposal only.

### **Protected Conversations**

Consultation is underway on introducing a system of "protected conversations" to allow employers to raise issues such as poor performance or retirement plans in an open way, free from the worry that it will be used as evidence in a subsequent tribunal claim.

### **Simplifying Compromise Agreements**

Consultation will commence on simplifying compromise arrangements, to enable two sides to reach a no-fault settlement in exchange for an agreement not to bring future claims. A standard text "settlement agreement" is proposed. In addition, the Government intends to rectify the issue relating to the wording of section 147 of the Equality Act which has caused some confusion as to whether discrimination claims can be compromised.



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### ***News from the Tribunal***

#### **High Court ruling on the limited scope of an employer's indemnity of employee under a compromise agreement.**

In *Coulson v Newsgroup Newspapers Limited* [2011] EWHC 3482 (QB) the High Court has held that the words "any administration, regulatory, judicial or quasi-judicial proceedings" in an indemnity provided by an employer to a former employee in a compromise agreement did not cover investigations by the police into alleged criminal behaviour by the employee. It could not have been intended by those drafting the agreement that personal wrongdoing by the employee would be encompassed by the indemnity.

The case concerned the well-publicised matter of the alleged criminal behaviour of Mr Andy Coulson while he was editor of News of the World. He entered into the compromise agreement with Newsgroup Newspapers upon the termination of his employment at the newspaper. Mr Coulson was seeking a judicial declaration that, as a result of the agreement, Newsgroup was obliged to pay the costs and expenses he incurred in defending the criminal allegations which included conspiracy to unlawfully intercept communications as well as making unlawful payments to police officers.

The wording used in the agreement is fairly standard, so this decision is good news for employers. On the other hand, there could be poor consequences for some employees who, claiming to have acted lawfully, are subject to accusations of, for example, harassment of a colleague who subsequently brings employment tribunal proceedings against the employee and the employer.

#### **Automatic unfairness in pre-transfer dismissal.**

In *Spaceright Europe Ltd v Baillavoine and another* [2011] EWCA Civ 1565, the Court of Appeal held that an employee's dismissal by a company in administration was automatically unfair under TUPE 2006 even though no transferee had been identified when the dismissal took place.

Mr Baillavoine was Chief Executive of Ultralon Holdings Ltd. Ultralon went into administration on 23 May 2008 and the administrators dismissed Mr Baillavoine on the same day. About a month later, the business and assets of Ultralon were sold to Spaceright. This was a relevant transfer under TUPE 2006.

Mr Baillavoine claimed unfair dismissal, relying on the provision in TUPE 2006 which states that the dismissal of an employee with continuous employment of a year or more is automatically unfair where the sole or principal reason for the dismissal is the relevant transfer or a reason connected with the relevant transfer that is not an economic, technical or organisational reason entailing changes in the workforce (an ETO reason).

The employment tribunal and the EAT both upheld Mr Baillavoine's claim and the respondents brought the case to the Court of Appeal.

The Court of Appeal rejected Spaceright's appeal, holding that Mr Baillavoine's dismissal was for a transfer-connected reason and was automatically unfair.



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It was key in the Court's decision that a transferee need not be identified for dismissal to be transfer-connected. A tribunal must assess the evidence and determine the reason for dismissal and whether that reason was connected with the transfer. In this case, there was evidence for the tribunal's finding that Mr Baillavoine's dismissal was transfer connected.

The court agreed with the tribunal and the EAT that Mr Baillavoine had not been dismissed for an ETO reason. For there to be an ETO reason, there must be an intention to change the workforce and to continue to conduct the business.

There is no ETO reason available where an employee is dismissed to enable administrators to make the business more attractive to potential transferees.

**As a member of the Cameron Riddell Associates Helpline service you can have access to the latest legislation and advice tailored to your business. If you need any information or assistance, please do not hesitate to give us a call or email us at [cameron.riddell@btinternet.com](mailto:cameron.riddell@btinternet.com).**