



HR Briefing

January 2010

EMPLOYMENT LAW UPDATE

This New Year we are going to jog your memory with a summary of the key employment law changes in 2009 and the likely impact they will have on employers in general.

The Default Retirement Age (DRA) is still legal!

2009 saw the final decision in the long-running Heyday case which confirmed that the DRA is still lawful. However, this decision was based on the fact that a review of the DRA position should be taking place early this year. Employers should be warned that the DRA is not likely to be around for much longer and if it is, then it is likely to be increased beyond the current age of 65.

Sick leave and Holidays shake up

Two cases from last year (Stringer and Pereda) determined that not only when employees were on sick did they continue to accrue holiday leave, and could take it when they returned to work, but also if an employee is on annual leave and falls ill, then they are allowed to reschedule that leave and carry it over to the next holiday year, if necessary! This obviously means that employers are going to have to monitor sickness and holiday absence carefully, and also take note of any case law, which contradicts this position in 2010!

Lawyers allowed into Disciplinary Meetings

It was also decided last year, in two cases (Kulkarni and G v Governors of X School), that employees could have their legal representatives with them in internal disciplinary hearings. This was due to the seriousness of the allegations against them, and the impact this would have on their future careers. Employers should always consider seriously requests for legal representatives to accompany employees under investigation where, not only they could lose their jobs, but suffer whole career loss.

TUPE Case Law Developments

A lot of TUPE changes were effected in 2009. Amongst other things it was decided that; transferees obligations to consult employees ended on the date of a relevant transfer, collective agreements withstood a transfer so transferees were under an obligation to adhere to agreements made in respect of their new workforce, which they had not been a party to, and finally, it was held that transferors who conveyed wrong information about the transfer to their employees, even though they believed it to be correct, did not fall foul of the TUPE regulations.

Key recommendations

- Employers should plan ahead for the almost certain forthcoming change regarding the DRA. It is likely to be made higher, or scrapped altogether in 2010, and retirement, and recruitment policies should be modified accordingly.
- Employers are advised to also update their holiday and sick leave policies to reflect the right to carry over in some circumstances, holiday leave, and also the right to accrue holiday leave when an employee is off sick.
- Employers should diligently monitor both holiday and sickness absence and keep adequate records.
- Employers should be aware of the situations in which employees are most likely to want (and more importantly) are entitled to legal representation at internal disciplinary meetings, and all requests for such should be considered seriously, and documented in writing.

And finally:

In a couple of strange cases, it was decided that employees had the right to seek employment law protection if they believed in climate change or psychics - yes really!

If you would like any more information regarding the above please log onto our website at www.berg.co.uk or click onto the following link <http://www.berg.co.uk/29-01-10-employment-news-round-2009> for a more detailed article highlighting employment law news from 2009.

One last thing - Don't forget to look out for our next briefing, which will detail forthcoming legislation and predicted changes to employment law in 2010 – but I'm sure the psychic believers out there knew that already!

If you have any queries on any of the above please contact **Alison Loveday** at alisonl@berg.co.uk to discuss further issues. Alternatively you contact **Alison** on **0161 833 9211**.

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- **Employers should be aware of the changes effected by recent TUPE case law in 2009 and any forthcoming changes in 2010. TUPE is one of the most complicated areas of employment law, and employers are advised to seek advice whenever TUPE issues might arise.**

berg legal 35 peter street manchester m2 5bg
t. 0161 833 9211 f. 0161 834 5566 e. help@berg.co.uk
www.berg.co.uk Regulated by the Law Society

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