



HR Briefing

February 2010

WHAT TO EXPECT IN 2010

As promised in last month's briefing, we set out below some key employment law changes to look out for in 2010, and the likely effects they may have.

Consultation on the Default Retirement Age (DRA)

It is expected that 2010 will see the end of the Default Retirement Age (DRA), or, in the alternative, its increase. The government is currently reviewing the DRA and has announced that a decision will be made in the summer, with any changes made to come into force in 2011. In the meantime employers should start to plan for the anticipated changes and review their retirement and recruitment policies accordingly.

Fit notes instead of sick notes

From 6 April 2010, a new 'fit note' system will replace the old 'sick note' system, in that employees will either be classified as 'unfit for work' or 'fit for work on the following advice'. The rationale behind this new system is to cut sickness absence in the workplace, by creating some 'middle ground' between either being sick or fit for work. New guidance is being published in order to help GPs make their assessments and list duties which they think patients may be capable of doing, and employers should follow the listed advice in order to avoid potential disability discrimination claims.

Changes to Paternity Leave

On 6th April 2010 the Additional Paternity Leave and Pay Scheme will come into force, and will apply to the fathers of babies expected to be born/adopted after 3 April 2011. Under the new scheme, if the mother of a child born after this date returns to work during her maternity leave, then she may transfer her residual maternity leave (up to a maximum of 6 months) to the child's father. The reasoning behind this was to give new parents flexibility to 'share' maternity leave. This may have an impact especially in families where the mother is on a higher wage than the father. Employers should note that this is going to be a legal right, and as long as the father is an eligible employee (ie. has been employed for 26 weeks before the 15th week of expected childbirth, and is the biological father/adopter or the mother's partner) then they must accommodate such requests and plan for the changes accordingly.

Right to request time off to train

From April 2010 the government is introducing the right for employees to request time off from work to train. This will work in the same way as the current flexible working requests available to employees. Employers are under an obligation to consider all requests for time off to train seriously, but are under no obligation to grant a request if they have a valid business reason for not doing so. Employers are not under an obligation to pay salary to employees during a requested training period, nor pay any training fees for self-imposed training. Initially, this right will only be applicable to those who work in organisations with more than 250 employees, with the right extending eventually to all businesses, in April 2011.

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.

The information and opinions contained in this document are not intended to be comprehensive, nor to provide legal advice. No responsibility for its accuracy or correctness is assumed by Berg Legal, or any of its partners or employees. Professional legal advice should be obtained before taking, or refraining from taking, any action as a result of the contents of this document.

Key recommendations

- Employers are advised to review their retirement and recruitment policies accordingly, in order to accommodate older workers.
- Employers are advised to follow the advice of the employee's GP regarding adjustments to the employee's duties. They are also advised to maintain a dialogue with their employee in light of GP recommendations in order to facilitate their return to work.
- Employers should adjust their family-friendly policies accordingly, in order to reflect the new right for fathers to take residual periods of maternity leave.
- Employers should look out for the 'Think Fathers' best practice guide which is to be published by the government in the near future to assist employers in dealing with the new rules.
- Employers are advised to consider employee requests for training carefully as they are under an obligation to do so.