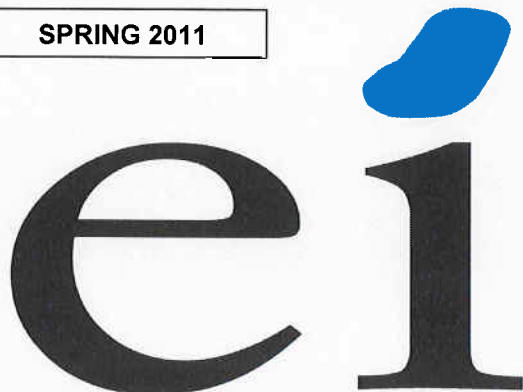


SPRING 2011



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Our fixed fee packages are amongst the most cost effective ways on the market to avoid employment law penalties. Included in the ei package are:-

- Preparation of employment contracts
- Unlimited access to our Employment Law Helpline
- Dispute Resolution Service
- Representation at Employment Tribunals
- Employment Law Bulletins

By signing up to ei – the fixed fee legal protection for employers – you can avoid costly penalties. Also visit our website to see our redundancy package.

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Statutory maternity, paternity and adoption pay increase

The standard rate of statutory maternity, paternity and adoption pay increases from £124.88 to £128.73 per week from 11 April 2011.

Statutory sick pay increase

The standard rate of statutory sick pay increases from £79.15 to £81.60 per week from 11 April 2011.

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Time off for training will not be extended to all employees

The Department for Business, Innovation and Skills (BIS) has announced that the right to request time off for training is not going to be extended to all employees from April 2011, as previously anticipated.

The right for employees to request time off for training to improve their skills has been available to employees of large organisations (250 or more employees) since April 2010, and this was to be extended to all employers from April 2011. The maximum penalty for an employer of such an organisation who fails to consider such a request is eight weeks pay.

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Additional paternity leave and pay comes into force

As of 3 April 2011 employees who are one of the following:

- The biological father of a child;
- The mother's husband or partner (including same-sex relationships);
- The child's adopter;
- The husband or partner (including same-sex relationships) of the child's adopter;

are entitled to take additional paternity leave of up to 26 weeks in the first year of their child's life or the first year after the child's placement for adoption and may be entitled to additional paternity pay. This will be so for those parents whose child's expected week of birth is on or after 3 April 2011, or for those who are notified of a match for adoption on or after 3 April 2011.

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Tribunal compensation limits increased on 1 February

From 1 February 2011, Tribunal compensation limits increased. The maximum compensatory award for unfair dismissal rose from £65,300 to £68,400. In addition the maximum amount of a week's pay, used to calculate statutory redundancy pay (among other things), increased from £380 to £400.

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Should you have any queries relating to the information that you have read in this update please do not hesitate to contact one of our employment law specialists, either by telephone or e-mail.

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Reform of the Employment Tribunal System

The government plans to consult on proposals to reform the Employment Tribunal System and qualifying periods for unfair dismissal. The consultation closes on 20 April 2011. The proposals include:

- Sending all unfair dismissal claims to ACAS to attempt conciliation before they reach a Tribunal;
- All unfair dismissal cases to be heard by a single Judge, rather than a panel of three;
- The introduction of a fee to file a Tribunal claim (the TUC claims this could be as high as £500);
- Extending the qualifying length of service period to bring a claim for unfair dismissal from one year to two.

Although it is said to be the Government's intention to ensure flexibility and fairness, controversy surrounds the proposed changes. The two most controversial of these are the increased qualifying period for unfair dismissal claims and the introduction of a fee to file a claim. Paying a fee is likely to discourage Claimants whose claims do not have good prospects of success but it could open the door to the argument that successful Claimants should have their costs paid, as in the civil Courts.

The other proposals include:

- Requiring all claims to be submitted to ACAS before a claim is issued and to allow ACAS a period of up to one month to offer pre-claim conciliation;
- Introducing automatic financial penalties for employers found to have breached employment rights on top of the ordinary compensation already payable. The penalty would generally be half the amount of the total award made to the Claimant and would be payable to the Government;
- Allowing employment judges to sit alone in a wider variety of cases;
- Reviewing the formula for calculating Employment Tribunal awards and statutory redundancy payment limits.

The proposals may help to prevent some of the nonsensical and time wasting claims, but it remains to be seen whether they would have any significant effect on employers' recruitment habits as is the Government's hope. What the Government does not seem to have noticed is the possible link between a record number of claims and record levels unemployment. Logic would suggest that the problem will resolve itself once the job market stabilises.

The Default Retirement Age (DRA) changes from 6 April 2011

The DRA is being phased out over a six month transitional period ending on 30 September 2011, subject to Parliamentary approval. Details are set out in Regulations due to come into force on 6 April 2011. As a result, the last date on which an employee can be given notice of retirement under DRA is 5 April 2011.

At present, if an employer wishes to retire an employee who has reached DRA, they must give the employee a minimum of six months notice, but no more than 12 months notice. Retirements notified on or before 5 April 2011 can continue through to completion, provided that the following conditions are met:

- DRA Procedure is followed correctly (including proper consideration of any request from the employee to remain employed), as set out in Employment Equality (Age) Regulations 2006; and
- The employee to be retired reaches the age of 65 (or the "normal retirement age", if this is higher) before 1 October 2011. Therefore an employee must reach 65 by the 30 September 2011 if they are to be retired in line with DRA. Employers will not be able to issue notifications of retirement using DRA after 5 April 2011.

We suggest that any employer considering such action should take advice before doing so.

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Bribery Act 2010

Seen as one of the toughest pieces of anti corruption legislation in the world, The Bribery Act 2010 is expected to come into full force from April 2011. The Act will affect every business in the UK. It introduces new offences, such as making company directors liable for bribery within their company if they fail to put adequate procedures in place to prevent it and making it a criminal offence to give or receive a bribe. Penalties have been set at a maximum of ten years imprisonment or unlimited fines

According to the Act, a company will be liable if hospitality is intended to induce a client to perform a function improperly. As the Bill was going through Parliament, it was stated that *"The Government is not seeking to penalise expenditure on corporate hospitality for legitimate commercial purposes. However, it is well known that lavish corporate hospitality can be used as a bribe to secure advantages and the offences in the Bill must therefore be capable of penalising those who use it for such purposes."*

Guidance was due to be published by the Ministry of Justice in January 2011. It is yet to be published, which only serves to increase the uncertainty and difficulties for companies who will be required to have procedures in place by the time the Act comes into force. Whether they are 'adequate' or not will, ultimately, be a matter for the Courts.

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Flexible working

The right to request flexible working will be extended to parents of children who are under the age of 18 on 6 April 2011. It currently applies to parents of children under the age of 17, or 18 if the child is disabled.

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Employers who flout the National Minimum Wage could be named

Details of the Government's Scheme, which came into force on 1 January 2011, to name and shame employers who flout the National Minimum Wage ("NMW"), have now been published. Although it was originally thought that a register of 'named' employers would be published, the Department for Business Innovation and Skill "BIS" will instead publish a press release identifying those employers who have breached the Regulations.

Once HMRC issues a 'notice of underpayment' and the case meets certain criteria, such as the employer knowingly or deliberately failing to comply with NMW obligations, BIS will be notified. The employer then has 28 days to make representations to BIS to avoid having their name published. In deciding whether to name an employer, there are certain issues that BIS will consider – such as whether the employer:

- Knowingly or deliberately failed to comply with its NMW obligations;
- Failed to take adequate steps to keep or preserve NMW records;
- Delayed or obstructed an NMW compliance officer in their duties; or
- Neglected to pay arrears of NMW to workers following an HMRC intervention.

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IMPORTANT NOTICE

These notes are for guidance purposes only. We believe the contents to be correct but they should not be taken as accurate or complete or to apply to specific situations, without first referring to us. Please feel free to call the office and speak to one of our employment team who will be willing to assist with any queries you may have.

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