

Employment law - legislative look-ahead for 2012

EMPLOYMENT TRIBUNAL LEGISLATION		
Legislation	Key dates	What is happening?
New compensation limits for tribunal awards	1 February 2012	<p>The main changes are:</p> <ol style="list-style-type: none"> 1. The limit on the amount of a week's pay for the purposes of calculating statutory redundancy payments and the basic award for unfair dismissal will increase from £400 to £430. 2. The maximum compensatory award for unfair dismissal will increase from £68,400 to £72,300. 3. Guarantee pay increases from the rate of £22.20 a day to £23.50 a day. 4. The minimum basic award in cases where the dismissal was unfair by virtue of health and safety, employee representative, trade union, or occupational pension trustee reasons will increase from £5,000 to £5,300. <p>Note that the new rates apply where the event giving rise to compensation or payment occurs on or after 1 February 2012.</p>
Unfair dismissal	April 2012	Unfair dismissal qualifying period to increase from 1 to 2 years.
Deposit orders	April 2012	<p>Deposit order limits to increase from £500 to £1000.</p> <p>Deposit orders are granted by employment judges at pre hearing reviews. They are made where the judge considers that a claim (or a response) has little reasonable prospect of success and require a party to pay a deposit in order to continue to take part in the proceedings.</p>

Costs awards	April 2012	<p>Costs that can be awarded to increase from £10,000 to £20,000.</p> <p>The circumstances in which costs are awarded are limited in tribunal proceedings and are not automatically awarded against the unsuccessful party. The most common threats of costs is where a party has acted vexatiously, abusively, disruptively, or otherwise unreasonably, or that the bringing or conducting of proceedings has been misconceived.</p> <p>The maximum amount was previously increased from £500 to £10,000 in 2001.</p>
Witness statements	April 2012	<p>Witness statements to be 'taken as read'.</p> <p>This means witnesses will not have to read out their statements at Tribunal hearings. Previously, they were always required to do this.</p>
Witness expenses	April 2012	<p>Parties to bear their own witness expenses - previously, parties could claim travelling costs and other allowances for their witnesses from the state.</p>
Judges to sit alone on unfair dismissal cases	April 2012	<p>Judges to sit alone in unfair dismissal cases - previously, a judge would sit with two lay members.</p>
Early Acas conciliation	Awaiting date for implementation	<p>ET1 to be filed first with ACAS to allow attempts at mediation - previously, there was no requirement on Claimants to attempt settlement with ACAS prior to making a claim in the employment tribunal.</p>
Mediation	Awaiting further information	<p>Long-term reform programme to be introduced for mediation</p>
Financial penalties for employers	Awaiting date for implementation	<p>Financial penalty to Exchequer for unsuccessful employers.</p> <p>This is a change that will introduce financial penalties for employers who lose at tribunal. These financial penalties will be half of the total award made by the tribunal, with a minimum threshold of £100 and a maximum cap of £5,000.</p> <p>Where a non-financial award is made, the tribunal will be able to ascribe a monetary value. The penalty will be reduced by 50% if paid within 21 days.</p> <p>The levy of a financial penalty will be at the tribunal's discretion; it will not be automatic.</p>

Underhill's review of the Tribunal Rules	Awaiting further information	Proposals under consideration: <ol style="list-style-type: none"> 1. Employment Judges to be given power to strike cases out at the Case Management Discussion (CMD) stage of proceedings. 2. ET1s to include Schedule of Loss. 3. "Calderbank" settlement offers to be introduced – this is a "without prejudice" (off the record) letter containing a settlement offer. 4. Legal Officers to be introduced for routine interlocutory work.
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PENSIONS LEGISLATION

Legislation	Key dates	What is happening?
Auto-enrolment - eligible jobholders to be auto-enrolled in an automatic enrolment scheme.	October 2012	Phased from October 2012 by size of employer. <ol style="list-style-type: none"> 1. Employers will be required to automatically enrol "jobholders" into a pension scheme. 2. Jobholders will be free to opt out of membership once they have been enrolled. 3. Employers will be required to make minimum contributions to jobholders' pension schemes. 4. Stakeholder pension schemes abolished.
Pensions tax relief	April 2012	HM Treasury will cut the total amount of pension savings by an individual that receives favourable tax treatment from £1.8 million to £1.5 million.

OTHER KEY LEGISLATION TO COME INTO EFFECT

Legislation	Key dates	What is happening?
Statutory payment increases	9 April 2012	Statutory Maternity, Paternity, Additional Paternity, Adoption Pay and Maternity Allowance will increase from £128.73 to £135.45. Statutory Sick Pay will increase from £81.60 to £85.85.
Gender diversity on boards	1 October 2012	Listed companies to report annually on diversity policy, including gender, and to consider diversity of the board when evaluating board effectiveness.

RED TAPE CHALLENGE

Legislation	Key dates	What is happening?
Spotlight on Employment Law	Spring 2012	Results awaited. Asked employers and employees to comment on regulations they felt could be simplified, better implemented or enforced, or abolished. Also looking at the following: <ol style="list-style-type: none">1. Reducing the “fear factor” in recruitment.2. Which employment rights are considered to be “fundamental”.

FUTURE CONSULTATIONS

Legislation	Key dates	What is happening?
Protected conversations	Awaiting date for consultation in 2012	Government to consult on protected conversations. This would ‘protect’ frank and open conversations between employer and employee over performance / ongoing employment issues from use by employees against their employers in claims for constructive dismissal.
Compromise agreements	Awaiting date for consultation in 2012	To consider: <ol style="list-style-type: none">1. Simplification.2. Coverage of existing and future claims.
Employment tribunal fees	Consultation opened on 14/12/2011 and will close on 31/03/2012	The introduction of issue and listing fees.
Rapid Resolution scheme	Consultation opened on 14/12/2011 and will close on 31/03/2012	Swifter and cheaper determination of low value straightforward claims, such as claims for holiday pay.
Equality Act 2010: third-party harassment provisions	Awaiting date for consultation in 2012	The removal of the third-party harassment provisions. Currently, the Act includes express protection for employees from third party harassment. These provisions apply where the employer knows that the employee has been harassed on at least two other occasions, and has failed to take reasonably practicable steps to prevent the harassment.

CALLS FOR EVIDENCE

Legislation	Key dates	What is happening?
Collective redundancy consultation	Closes on 31 January 2012	<p>To explore consequences of reducing the 90-day period for collective consultation in large-scale redundancy situations to 60, 45 or 30 days.</p> <p>Evidence to be used to formulate policy proposals that will be put forward for formal public consultation.</p>
TUPE 2006	Closes on 31 January 2012	<p>Seeking views on the effectiveness of TUPE 2006.</p> <ol style="list-style-type: none"> 1. Does TUPE gold-plate the Acquired Rights Directive? 2. Is it overly bureaucratic? <p>Focus on service provision changes, insolvency proceedings and collective redundancy consultation.</p> <p>Evidence will be used to formulate policy proposals that will be put forward for formal public consultation.</p>
“Radically slimming down” dismissal procedures	Further dates and information to be announced.	<p>Simpler, quicker and cleaner.</p> <p>Potential changes to ACAS Code of Practice.</p> <p>Guidance for smaller employers.</p>
“Compensated no-fault dismissals”	Further dates and information to be announced.	<p>For micro-businesses (10 employees or less).</p> <p>Pay notice pay and equivalent of statutory redundancy pay.</p>

OTHER LEGISLATION CURRENTLY UNDER REVIEW

Legislation	Key dates	What is happening?
Sickness absence review	Further dates and information to be announced.	<p>Employees who have been absent for more than four weeks to be referred to a new Independent Assessment Service.</p> <p>Fit notes should be revised so that an individual's capacity to return not only to their own job, but to work more generally, is considered. Employees should after 20-weeks of absence consider employment opportunities beyond their current employer.</p>
Whistleblowing	Further dates and information to be announced.	<p>Breach of employment contract not to be covered.</p> <p>Currently, employees are able to 'blow the whistle' about breaches to their own personal work contract.</p>
Agency Workers Regulations	Further dates and information to be announced.	<p>Review of its application.</p> <p>Businesses to be able to use agency workers as flexibly as possible.</p>
National Minimum Wage Regulations	Further dates and information to be announced.	Consolidation of existing Regulations.
Maximum Tribunal Compensation Awards	Debate to resume on 20 January 2012	Capping awards for unfair dismissal, wrongful dismissal and employment related discrimination at £50,000.00.

ISSUES BEFORE THE COURT

Legislation	Key dates	What is happening?
Can an employee recover damages where a breach of contractual disciplinary procedures means findings for dismissal were made which wouldn't otherwise have been?	The reserved judgment is awaited.	<i>Edwards v Chesterfield Royal Hospital NHS Foundation Trust [2010]</i> and <i>Botham v Ministry of Defence [2010]</i>
Can a contractual obligation to arbitrate prevent an individual pursuing a tribunal claim?	Court of Appeal to hear in January 2012	<i>Clyde & Co LLP and another v Winkelhof [2011]</i>
Can discrimination be justified solely on grounds of cost?	Court of Appeal heard on 07/12/11 with judgment in 2012	<i>Woodcock v Cumbria Primary Care Trust [2011]</i>



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