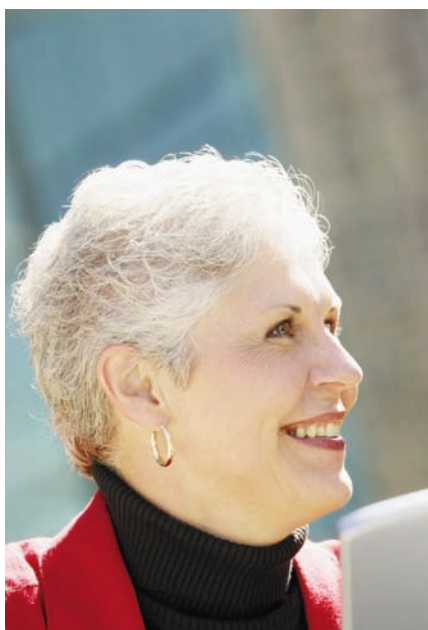




EmployNet

Default retirement age is lawful.....(for now)



It may have come as a surprise for many, but on 25 September a landmark judgment by the High Court ruled that the default retirement age (DRA) of 65 was legitimate and proportionate and therefore employers could compulsorily retire employees at age 65.

The government introduced the DRA in 2006 as part of the Employment Equality (Age Discrimination) Regulations 2006. Age Concern brought the case, known as the Heyday case, against the government in 2006 as they felt it was unlawful and not compliant with the Equal Treatment Directive. The ECJ found that the UK High Court had to decide whether forced retirement was justified as a proportionate means of achieving a legitimate aim.

The Equality and Human Rights Commission also argued that 70 should be the earliest DRA.

However, Mr Justice Blake found in favour of the government's arguments but was clear that the Heyday defeat could be short-lived and may have been different had the government not recently brought forward its review of DRA from 2011 to 2010. It is predicted that the government review will lead to an increase in retirement age to reflect longer life expectancy and decreasing pension benefits.

The decision has led to the High Court trying to please both sides. By agreeing with the current DRA employers are given a break in these tough times. However Mr Justice Blake's comments that it could be short-lived, with some experts predicting even removed entirely, will have appeased age equality groups.

Some employees will be extremely disappointed though. Subject to appeal, this decision brings an end to the Heyday challenge and as a result some 800 or so claims lodged against employers relating to compulsory retirement will be dropped.

So, for now at least, employers can continue to retire people from age 65. We advise however that all employers should begin to think about their older workers now if forced retirement is no longer an option in the future.

Meet the team

Welcome to EmployNet Update, the newsletter designed to keep you up to date with changes into employment law.

Myers Lister Price have a dedicated team of employment specialists available to help either the employer or the employee.

Please contact us for assistance or advice.

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Holiday and sickness absence

A landmark ruling by ECJ now means that those employees who fall ill whilst on annual leave will be able to defer those days' sick as part of their holiday entitlement at a later date.

The Chartered Institute of Personnel and Development (CIPD) has heavily criticised the new ruling, claiming that it is 'divorced from the real world' and will possibly force employers to implement less generous Statutory Sick Pay schemes.

Employers will also clearly not welcome the news. The possibility of abuse is very high and will be hard for employers to monitor. Unscrupulous employees could fabricate or exaggerate illnesses whilst on holiday and gain extra holiday as a result. The new ruling also means that employees will be able to carry over holiday accrued whilst being sick on annual leave to the next holiday entitlement year.

It should be noted that currently this ruling only applies to the public sector, although private sector workers could also soon benefit in the same way if the UK Working Time Regulations are amended to comply with this latest European ruling as anticipated.

We advise that you should amend sickness absence policies and procedures to take into account the new right, and you should consider amending sick pay entitlement so that sickness during holiday is not covered above the statutory minimum.

This is becoming a very complicated area – so you should legal advice before doing so.

Swine Flu Update

Although there is now less media coverage, swine flu has not gone away, and the predicted second wave will hit us much harder. Experts predict that between 30 – 50% of the public will be infected by swine flu over the winter months. Rather worryingly, research conducted the Business Continuity Institute (BCI) shows that the majority of employers (57%) have either no or weak plans to deal with a swine flu pandemic.

A new guide, titled Risk and Business Continuity Management, outlines what employers need to do. To summarise, please see the main points outlined below.

- Prioritise essential activities
- Provide cross training of staff in critical areas so employees have the skills to fill in for absent colleagues
- Consider remote working to prevent spread of infection
- Consider reducing human contact for those with key skills
- Consider increasing customer self-service options such as telephone and online transactions
- Keep on top of government advice and adapt plans to reflect changes
- Communicate with staff, customers and suppliers
- Provide a safe workplace by implementing rules on health reporting, office and personal hygiene, protective equipment, social distancing and working hours.



At a glance - some key 1 October employment law changes

Supreme Court

New Supreme Court, replacing the House of Lords as the highest appeal court in the UK opens for business.



National Minimum Wage Increases

Age 22 or over - now £5.80

Age 18-21 - now £4.83

Age 16-17 - now £3.57

Tips

Tips paid through the payroll will no longer be able to be counted towards national minimum wage.

Data Protection

Fee rising to £500 for public authorities and private employers with 250+ staff and an annual turn-over of £25.9 million.

Redundancy Payments

The maximum weekly amount for calculating statutory redundancy pay increases from £350 to £380.

Update – delay to Agency Workers Directive

The Agency Workers Directive (AWD) has been delayed by until October 2011 as part of the government's objective to cut the cost of business regulations.

The AWD gives temporary staff the same employment rights as permanent staff after 12 weeks in the job. Employers' groups around the country will no doubt welcome the news.

And finally, don't forget...

On 1st January 2010 the standard rate of VAT returns to 17.5%. There are two other major changes to VAT that will also be introduced in 2010. For full details of all changes please visit:

[http:// www.hmrc.gov.uk/vat](http://www.hmrc.gov.uk/vat)