

## EMPLOYMENT LAW NEWSFLASH E BULLETIN

### Developments for 2008

The increase to compensation limits for Employment Tribunal calculations have been announced, and will apply to dismissals occurring on or after 1 February 2008.

The increases are:-

- A week's pay (basic award/redundancy payment) from £310 to **£330**
- Maximum Unfair Dismissal Compensatory Award from £60,600 to **£63,000**

A number of other key legislative developments are expected to occur this year, and below is a summary of the main provisions:

- [Employment Bill](#)

Expected to receive Royal Assent this summer, it proposes to repeal the controversial statutory dismissal and grievance procedures

- [Information and Consultation of Employees Regulations 2004](#)

From 6 April 2008 the Regulations, which outline a regime whereby UK employers may (and in some cases must) introduce information and consultation agreements governing how they consult their work forces about economic and employment-related matters, will apply to employers with at least 50 employees.

- [Sex Discrimination Act 1975 \(Amendment\) Regulations 2007](#)

The amendments required to implement the EU Gender Directive stipulate that it is unlawful to discriminate in the access to and the provision of goods, facilities, services or premises on grounds of the following:

1. sexual harassment and harassment on grounds of sex
2. gender reassignment
3. pregnancy

- [Corporate Manslaughter and Corporate Homicide Act 2007](#)

From 6 April 2008 the new civil offence of corporate manslaughter becomes effective, applying to an "organisation" including companies, partnerships, Government departments and other public bodies. The Act provides that an organisation will be guilty if the manner in which its activities are managed or organised causes a person's death and amounts to a gross breach of a relevant duty owed to that person.

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### Dismissal update

In [The Governing Body of Hastingsbury School v Clarke](#) the EAT considered the necessity to investigate ill health prior to dismissal.

The case concerned a Teacher, Mr Clarke, who was suspended for inappropriate behaviour in front of his students, including making inappropriate sexual remarks and claiming to have been taken over by aliens.

The disciplinary proceedings were postponed pending the outcome of a criminal investigation, following which the employee was not prosecuted. The disciplinary proceedings resumed, and Mr Clarke's union representations made a submission that the advice of Mr Clarke's doctor should be sought, and that his case should be treated as a matter of ill health, rather than gross misconduct.

As a result the school made a referral to occupational health regarding his fitness for working with young people. However, prior to obtaining Mr Clarke's consent to the referral, he received written notification that he was summarily dismissed. A psychiatric report subsequently diagnosed psychotic illness.

Proceedings were issued for unfair dismissal, with Mr Clarke submitting that if it was reasonable to suspend him pending an investigation then it was reasonable to extend the suspension to obtain a medical opinion.

The EAT held that a reasonable employer would have not considered the health issues separately to the disciplinary process due to the link between the two matters.

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### Extensions of time

The standard requirement for unfair dismissal claims to be issued in the Employment Tribunal within three months of the date of dismissal can be departed from in certain circumstances, and the EAT has considered this matter in the case of [Ashcroft v Haberdashers Aske's Boys School](#)

This case is now an authority for the point that the existence of an internal appeal can extend the time for a claim to the employment tribunal.

The position under statute is that the normal time limit for bringing a claim will be extended by three months if the employee had reasonable grounds for believing that the Statutory Dismissal and Disciplinary Procedures were being followed.

As a result there is an allowance that the employee may not issue proceedings while the internal appeal is

ongoing, and so the tribunal need only consider if it was reasonably practicable to submit the claim after receiving the outcome of the appeal.

Whilst this provision does provide an extension for employees whose circumstances fall within its scope, any claim must be submitted "within such period as the tribunal considers reasonable".

This is an important loophole for employers to consider, who may assume that once the initial three month time limit has expired they will escape any claims. As such it is essential to ensure that any ongoing disciplinary or appeal proceedings after such time continue to adhere to the correct procedures to minimise the risk of a claim.

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#### **Holiday pay and sick pay**

The Advocate General has handed down the opinion in *Stringer and others v Her Majesty's Revenue and Customs*. This case was previously known as *Ainsworth v HMRC*.

The case addressed the question of whether article 7 of the EC Working Time Directive means that workers must receive minimum annual paid leave of four weeks during a long period of incapacity for work.

This controversial case has attracted a great deal of scrutiny, with the Court of Appeal in 2005 holding that the right to four weeks' statutory holiday does not continue to accrue whilst an employee is off on long term sickness absence. An appeal was made to the House of Lords, who thereafter referred the question to the European Court of Justice.

The Advocate General has stated that a worker can accrue paid annual leave while off sick but cannot take that paid annual leave during their sick leave. On termination of employment workers are entitled to compensation for annual leave which has accrued but has not been taken due to ill health absence.

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***For any further information about employment services from mfg, please do not hesitate to contact Sally Morris on 0121 504 4717 or [sally.morris@mfgsolicitors.com](mailto:sally.morris@mfgsolicitors.com)  
5 Centre Court, Vine Lane, Halesowen, West Midlands, B63 3EB***

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