

Board of Directors Briefing – Employment Law Developments for 2013

Key:

	<ul style="list-style-type: none"> • Significant impact
	<ul style="list-style-type: none"> • Moderate Impact
	<ul style="list-style-type: none"> • Minimal Impact – No immediate action required

A. SUMMARY

When?	What?	Impact	
February 2013	Increase in tribunal compensation limits. The maximum compensatory award for unfair dismissal will rise from £72,300 to £74,200.	Increase cost to Trust if claimant succeeds.	
March 2013	Revised parental leave entitlement. Employees will be entitled to take a total of 18 weeks' unpaid parental leave (up from 13 weeks) up to the child's fifth birthday.	Cost to Trust – employees entitled to an extra month of parental leave. Extra cover may be required. Amend Parental Leave policy to reflect the changes.	
	Repeal of employer liability for third party harassment and the discrimination questionnaire provisions in the Equality Act 2010.	Removes employer liability for harassment by third parties and the obligation on the Trust to respond to requests from employees that have a potential harassment case. Good news for employers. Inform employees about this change in policies.	
April 2013	Portable criminal record checks.	Less admin for employer and employee. Good news for both parties. Update HR team and employees.	
	Introduces a public interest requirement for protected disclosures.	Harder for claimants to bring whistle blowing claims. Good news for employers. No immediate action required.	
	Collective Redundancy Consultation changes. Consultation period where more than 100 employees are at risk of redundancy will be reduced from 90 days to 45 days.	Shorter consultation period for redundancies of 100+. Cost of employing employees through consultation period is reduced. Good news for employers. Arrange training for HR team and review of policy.	
	New statutory payment rates. The rates for statutory maternity, paternity and adoption pay to increase from £135.45 to £136.78. Statutory sick pay (SSP) will increase from £85.85 to £86.70,	Statutory payments increased. Update payroll team and take into account when budgeting.	
	Real Time Information for PAYE. (RTI) reporting of PAYE and NIC information will be a legal requirement from April (employers with 5,000 or more employees by October).	Payroll team will need new processes in place. Liaise with payroll software providers.	
	New employment tribunal rules and procedure.	Streamlining tribunal process – cases will be dealt with more efficiently. Good news for both parties. No immediate action required.	
	For information only. Employee-shareholder contracts (Will not apply to STH)	The Government has announced a scheme whereby an employee is offered shares in the employer company in exchange for giving up employment rights.	
Summer 2013	Fees will be introduced into the employment tribunal.	Claimant will pay fees to bring a claim. May act as a deterrent and mean fewer claims against the Trust. Respondents will also have fees for applications. Training for HR team on changes.	

B. THE DETAILS

1. SIGNIFICANT IMPACT FOR STHTF

When	What	Details	Actions
April 2013	Changes to collective redundancies consultation.	<p>There will be a cut to the minimum consultation period that must take place where more than 100 employees are at risk of redundancy from 90 days to 45 days. This will reduce any unnecessary delay to teams restructuring and the cost of the whole notification period will reduce. Additionally employees on fixed-term contracts which have come to an end are excluded from consultation requirements.</p> <p>ACAS will produce new guidance on collective redundancies this year.</p> <p>Note that there is no reduction in the scale of protective awards that can be made by the tribunal – these remain at 90 days' pay per affected employee. This means that the cost of breach is now much greater than the cost of compliance.</p>	Briefing and training for HR is being arranged.

2. MODERATE IMPACT FOR STHT

When	What	Details	Actions
March 2013	Revised Parental Leave Directive	The UK will implement the revised Parental Leave Directive in March which will increase parental leave entitlement from three to four months. Employees will still only be entitled to take up to 4 weeks' unpaid parental leave per child, per year.	The Trust is updating its Parental Leave policy.
April 2013	Portable Criminal Record Checks	The Protection of Freedoms Act 2012 introduced a number of changes including the merging of the Criminal Records Bureau and the Independent Safeguarding Authority to become Disclosure and Barring Service (DBS) in December 2012. In April 2013, the DBS will be launching an Update Service which will enable individuals to register once for a criminal records check which will then be automatically updated and available for organisations to check. This will make the certificate portable between roles and should decrease the administration for employers and employees. A new certificate will only be issued where the DBS receives new information. It is also planned that, in 2013, the DBS will start issuing the disclosure certificate to the applicant only and not the employer.	Update the recruitment team that deals with certificates and checks. NB there has been a recent Court of Appeal decision which found that CRB checks may be incompatible with the Human Rights Act and recommended a system so that less serious crimes are filtered. The Government has not announced a decision to act on this.
April 2013	New Statutory Payment Rates	The Department of Work and Pensions has announced that the rates of statutory pay will increase in April, as follows: <ul style="list-style-type: none"> • Standard rates for statutory maternity, paternity and adoption pay to increase from £135.45 to £136.78 with the weekly earnings threshold also rising from £107 to £109; • Statutory sick pay (SSP) will increase from £85.85 to £86.70, again with the weekly earnings threshold also rising from £107 to £109; and 	The new rate of SSP will be effective as of 6 April and the other new rates will be effective from 7 April. Again, these are not significant increases but HR/Payroll teams are being made aware of changes.
April 2013	Repeal of Third Party Harassment and Discrimination Questionnaire Provisions	The Government has confirmed that it will remove employer liability for harassment by third parties. Note that there are still other legal routes that employees can take if they feel that they have been discriminated against. The Government has also confirmed that it will remove the discrimination questionnaire procedure. This change will be welcome by many employers as the form can be used for 'fishing expeditions' by employees.	Update HR team on change and amend discrimination policies.

April 2013	Real-Time Information for PAYE	<p>The Trust will need to make changes to its payroll systems to allow them to comply with the new "real-time information" regime, which requires certain information to be sent to HMRC electronically at the same time as payments are made.</p> <p>For most employers, Real Time Information (RTI) reporting of PAYE and NIC information will be a legal requirement from April (employers with 5,000 or more employees will agree start dates with HMRC, expected between June and September). All employers will be required to join the regime by October.</p>	<p>The Trust is reviewing its position with the payroll team and payroll software providers to ensure that it is ready for this change.</p>
Summer 2013	Tribunal Fees	<p>The Government will introduce a two-stage fee structure for employment tribunal claims so that users of the system bear more of the cost. Claimants will need to pay an 'issue fee' to bring their claim and a subsequent 'hearing fee' if the claim progresses to a full hearing. This is not intended to deter potential claimants although this will be a side effect. Fees will be means-tested and presumably those who are unemployed will have nothing to lose.</p> <p>Fees for parties wishing to make one of five discrete applications: review of a tribunal judgment (£100 - £250); set aside a default judgment (£100); dismiss a claim following settlement (£60); judicial mediation (£600); and a counter-claim in a breach of contract (£160).</p>	<p>This will impact on the Trust management of its ET claims and should be kept in mind when setting the budget to defend a claim.</p> <p>Briefing and training for HR is being arranged.</p>

3. MINIMAL IMPACT FOR STHFT - NO IMMEDIATE ACTION REQUIRED

When	What	Details	Effect
February 2013	Increase in Compensation Limits	The maximum compensatory award for unfair dismissal will rise from £72,300 to £74,200. The maximum limit on a week's pay will rise from £430 to £450. The minimum basic award for certain unfair dismissals will increase from £5,300 to £5,500.	These are not significant increases but may impact on the HR team's strategy when dealing with tribunal claims and should be taken into account when budgeting
April 2013	Public Interest Requirement for Whistle blowing Disclosures	The definition of a protected disclosure will be tightened to restrict the definition of qualifying disclosure to disclosures "in the public interest". Currently an employee can allege he or she has blown the whistle about a breach by the Trust of the employment contract.	This is likely to reduce whistle blowing claims or at least the scope of such claims.
	New Tribunal Rules of Procedure	<p>After the Government's consultation, new Rules of Procedure are expected to come into force in April.</p> <ul style="list-style-type: none"> - An initial "sift" of cases with a view to considering whether claims should be struck out. - The removal of the distinction between Case Management Discussions and Pre-Hearing Reviews - Provision for a specific rule allowing tribunals to set and enforce timetables for giving oral evidence, questioning witnesses and presenting submissions. - A change to the withdrawal process, meaning that, where claimants withdraw their claims, employers no longer have to make an official application for the case to be dismissed. - New 'presidential guidance' to be published, setting out clearly what to expect from the tribunal process and what is expected of parties. 	This should streamline the tribunal process, reducing time and costs.
	Employee-shareholder contracts	<i>For information only</i> - The Government is introducing a new type of employment contract, under which employees will be given shares in exchange for waiving certain employment rights such as the right to claim unfair dismissal, statutory redundancy pay and the right to make statutory requests to work flexibly.	This will not directly affect the Trust, but it is a significant employment development this year.