



Welcome to SmartHR's April 2013 E-Newsletter

We hope you find this e-newsletter of interest and share it with your colleagues. Gail Yeowell Chartered FCIPD FInstAM(Dip) FCMI FIRP
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UK: UPDATE ON MAJOR CHANGES TO EMPLOYMENT LAW EXPECTED IN 2013

SmartHR provides a wide range of **professional and effective outsourced HR solutions** tailored to individual needs.

Various consultations took place in 2012 with regard to employment legislation. The main pieces of legislation expected to receive Royal Assent in 2013 are the **Enterprise and Regulatory Reform Bill**, the **Growth and Infrastructure Bill** and the **Children and Families Bill**. These are all currently progressing through parliament.

The anticipated timescales for the provisions of these Bills to come into force are:



HR Consultancy:

February 2013 (already in place):

- HR Consultancy and Advice
- Tailored Business Support Packages for a fixed monthly fee
- HR Healthchecks and Planning
- Employment Contracts and Staff Handbooks (IOM and UK)
- HR Policies and Procedures
- Induction Programmes
- Performance Management Frameworks / Appraisal Processes
- Redundancy Support and Outplacement Services
- Ad hoc / Interim HR and Change Management Projects

- **Tribunal Awards – increase in limits:**

- A week's pay increased from £430 to £450.
- The maximum compensatory award for unfair dismissal rose from £72,300 to £74,200.
- The maximum basic award (and redundancy payment) rose from £12,900 to £13,500.

March 2013 (already in place):

- **Parental Leave:** Unpaid parental leave in the UK will increase from 13 weeks to 18 weeks per parent, per child aged under 5. The maximum of 4 weeks' leave per annum will remain unchanged. The provision for parents of disabled children will continue i.e. up to 18 weeks' leave to be taken up until the child's 18th birthday. *In 2015, the current age limit on parental leave will increase, giving each parent the right to up to 18 weeks' unpaid parental leave for each child under 18.*



Training:

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Employment Law 2013 Update continued...

Longer-term, changes could occur in the following areas:

- **Flexible working:** The right to request flexible working is expected to be extended to all employees in the UK from April 2014. The current timescale of meetings will be changed to a duty to consider a request 'reasonably'. A consultation on a new statutory code is expected in 2013.
- **Shared parental leave:** The UK Government is proposing to make the remaining period of maternity leave, after the 2 week compulsory leave, eligible for sharing. Consultation is expected this year, with implementation by 2015.
- **Working Time Regulations amendments:** Changes are expected to the UK's WTR's to comply with European Court of Justice decision on the interaction between annual leave with sick leave, maternity leave and parental leave.
- **Employee Shareholder Status:** The House of Lords has recently rejected the proposed Employee Shareholder Status set out in the **Growth and Infrastructure Bill**. The UK Government has published a list of concessions for the House of Lords to consider. The Employee Shareholder Status proposal would allow companies to give shares to employees in exchange for them relinquishing some of their statutory employment rights e.g. unfair dismissal, statutory redundancy pay, right to request flexible working and time off for training. Women would also be required to provide 16 weeks' notice of their return from maternity or adoption leave (instead of the usual 8 weeks). Up to £50k of shares would be exempt from capital gains tax.

April 2013:

- **Statutory Sick Pay increased:** from £85.85pw to £86.70pw on 6 April 2013.
- **Maternity Allowance, Statutory Maternity Pay, Statutory Paternity Pay and Statutory Adoption Pay increase:** from £135.45pw to £136.78pw. The weekly earnings threshold for these payments increased from £107 to £109.
- **Collective Redundancies:** From 6 April 2013 the minimum collective redundancy consultation period for UK employers proposing to make 100 or more redundancies at one establishment has been reduced from 90 to 45 days. In a case of 100 or more redundancies, an employer must notify the Government (using a HR1 Form) about the redundancies at least 45 days before the first dismissal takes effect. *ACAS has published a new guide on collective redundancies.*
- **Fixed-Term Employees:** A fixed-term employee must be included in collective redundancy consultation – if they are being made redundant before their contract has expired. This applies to a case of 20 or more redundancies.

Summer 2013 (dates to be confirmed):

- **Employment Tribunal Fees:** Fees to make tribunal claims are expected to be introduced in the second half of 2013.
- **Unfair Dismissal Cap:** The UK Government intends to introduce a 12 month pay cap on the compensatory award for unfair dismissal awarded by Employment Tribunals, but the overall cap on compensation (currently £74,200) will remain in place. *Compensation for successful claims of discrimination will remain unlimited.*
- **Settlement Agreements:** Compromise Agreements are to become Settlement Agreements, with a new ACAS Code of Practice and guidance. The UK Government intends to make it easier for small employers to enter into Settlement Agreements which would allow employers and employees to have a conversation and make a settlement offer to end the employee's employment, without the conversation being admissible as evidence in an unfair dismissal claim (it will still be admissible in other claims such as discrimination).
- **Third Party Harassment:** Section 40 of the Equality Act 2010, which covers third-party harassment, whereby an employer could be found liable if an employee is harassed by a third party e.g. a customer or supplier, is expected to be repealed. The questionnaire procedure is also expected to be removed.

UK: CHANGES TO DISCLOSURE & BARRING SERVICE

Following a Court of Appeal judgment in January which stated that the disclosure of all cautions and convictions on a DBS Certificate was incompatible with Article 8 of the Convention of Human Rights, the Home Office has started the legislative process (subject to agreement by Parliament) so that certain old and minor cautions and convictions will no longer be disclosed on a DBS Certificate.

The rules now being considered (but await Parliamentary approval) are:

An adult conviction will be removed from a criminal record certificate if: i) 11 years have elapsed since the date of conviction, ii) it is the person's only offence and iii) it did not result in a custodial sentence.

Even then it will only be removed if it does not appear on the list of specified offences. If a person has more than one offence, then details of all their convictions will always be included.

An adult caution will be removed after 6 years have elapsed since the date of the caution – and if it does not appear on the list of specified offences.

For under 18s at the time of the offence:

A conviction received as a young person would be eligible for filtering after 5.5 years – unless it is on the list of specified offences, a custodial sentence was received or the individual has more than one conviction. A caution administered to a young person will not be disclosed if 2 years have elapsed since the date of issue – but only if it does not appear on the list of specified offences.

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UK: EAT RULING RE DIABETIC DISABILITY – NO STATUTORY DUTY TO MAKE REASONABLE ADJUSTMENTS

Crossland v OCS Group and another

In this case a diabetic night-watchman felt he needed to be relieved of the requirement to patrol outside the premises he was guarding.

OCS Group accepted Crossland was disabled and worked alone at night. His security duties included patrolling the exterior of the Company's premises. Crossland refused to undertake outside patrols and was disciplined. He claimed that OCS Group had failed its duty to make a reasonable adjustment. As a diabetic, he argued that he may suffer unpredictable hypoglycaemic episodes that could lead to his serious injury or death in an extreme case (particularly if he could not get assistance). Crossland felt the Company should have taken steps to reduce the risk of injury occurring as a result of him suffering such an episode.

An ET judge identified at a pre-hearing review that the requirement to carry out external patrols was not likely to put Crossland at a substantial disadvantage compared to non-disabled people without his disability because, as a diabetic, the risk was no higher outside the premises than inside the premises. Crossland appealed.

The Employment Appeal Tribunal (EAT) dismissed Crossland's appeal and found that the employment judge had been correct in finding that the claim had little prospect of success and that Crossland had not put forward a convincing case that the consequences of a hypoglycaemic episode occurring outside would be substantially worse than if it occurred indoors. For example, if he were unable to phone for assistance that could equally apply outdoors and indoors. **The EAT did not find that the requirement to patrol outside was likely to place Crossland at a substantial risk because he was a diabetic.**

Under the UK's Equality Act 2010, where an employer knows, or reasonably ought to know, an employee is disabled and it is likely that a provision, criterion or practice puts that employee at a substantial disadvantage in comparison with those who are not disabled, the employer has a duty to take reasonable steps to avoid that disadvantage. Failure to comply with the duty constitutes discrimination under the Act. Within the Act, 'substantial' is defined as meaning 'more than minor or trivial'.

Case law and the 'EHRC Employment Statutory Code of Practice' state that 'likely' means 'could well happen'. A comparison with a non-disabled person takes place to establish whether the 'provision, criterion or practice' puts the disabled person at a disadvantage compared to co-workers who do not have the disability (no actual comparator, or comparator group, is required).

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- **IOM: National Insurance waiver extended** – the NI holiday scheme, which waives certain employer NI contributions for new hires, has been extended to 5 Apr 15.
- **UK: Mental Health (Discrimination) Act 2013** – this received royal assent on 28 Feb 2013 and will take effect 2 months from then (the beginning of May 2013). The Act aims to reduce the stigma and negative perceptions associated with mental illness and repeals legislative provisions that may prevent people with mental health conditions from serving as members of parliament, members of the devolved legislatures, jurors or company directors. *Note: Any terms in a Directors' Service Agreements that refer to dismissal due to being of unsound mind will need to be removed once this becomes effective.*
- **UK: Whistleblowing** – when the Enterprise and Regulatory Reform Bill becomes law, only disclosures made "in the public interest" will be protected. The requirement for disclosures to be made in "good faith" in order to be protected will also be removed. An employer can also be found to be vicariously liable (partly responsible) for employees who victimise colleagues for blowing the whistle (employers will have a defense if they can show they took all reasonable steps to prevent the victimisation). Employees may also be personally liable for victimisation.



Are you complying with employment legislation?

Do you need support with HR matters on a flexible basis?

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- Managing Performance
- **Negotiating & Influencing**
- Coaching & Feedback Skills
- **Managing Performance Problems**
- Managing Discipline & Grievances
- **Managing Absence**
- Effective Team Meetings
- **Effective Time Management**
- Delegation Skills
- **Managing Stress**
- Customer Care, Telephone & Time Management Techniques
- **Train The Trainer**

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