

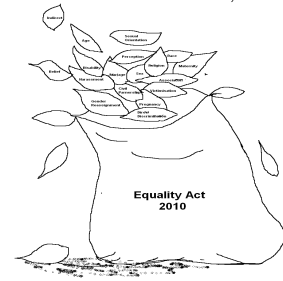
Last Job Lot

Moon & Co

Solicitors

Employment Newsletter

Highlights Autumn 2010



New Services

First we are delighted to have formed an association with Nigel Clarke solicitor of Canterbury Law. Nigel, also based in Charing, is an expert in divorce and children related matters and is an Accredited Family Mediator, Nigel is also skilled in personal and medical injury cases. Like us Nigel very much believes in providing individual, personal and professional service so it is great to be able to collaborate and provide a wider range of services to each others' clients. For more information on his services do have a look at his web site www.canterbury-law.co.uk

Get Certainty

We like to add value to what our clients get and are excited about new service for those of you who make Wills with us. Are you sure your family could find your latest will when you pass on? A recent survey showed that 67% of people in the UK did not know where to find their parents' Wills. Our new service can reduce the risk that no will or the wrong will is found and used.

With house moves, the passage of time and even moving around the furniture can all mean your family won't be able to find your Will when you pass on. Recently a client had a very worrying few weeks when he couldn't find the Will his wife had made knowing a dispute would arise with the family if her valid Will was lost. Now as members of "Certainty" we can register that your Will is held by us. The Certainty register, the only one approved by the Law Society, means your family can locate your Will when you pass on. To register your Will must be written by a solicitor or STEP member. For more details just give us a call.

Retirement to be Retired

For the last few years if an employer wanted their employee to retire (generally at 65 or over) they could almost guarantee a fair dismissal by giving between 6 and 12 months notice and following the rest of the statutory retirement process. Now it is proposed that the default retirement age of 65 will be phased out from April 2011. The proposals are still subject to consultation but suggest that

- presumed fair retirements will end completely on 1 October 2011 and no new notices of intended retirement can be issued after 6 April 2011.
- only objectively justified retirements will be permissible after 1 October
- there will be transitional rules where retirement notices have been issued before 6 April 2011 to take effect before 1 October 2011. If notification is before 6 April 2011, but intended to take effect after 1 October 2011 it won't be valid unless it can be objectively justified.

So if you want someone to retire before 1 October 2011 you need to take advice promptly.

The Equality Act

Most of The Equality Act 2010 became effective from 1 October 2010. The act brings together and harmonises the current mass of anti discrimination legislation. Much stays the same but there are changes which will affect employers so now is a good time to review your internal procedures and Equal Opportunity policy.

People will still be protected from discrimination relating to Age, Disability, Gender Reassignment, Marriage or Civil Partnership, Pregnancy & Maternity, Race, Religion & Belief, Sex or Sexual Orientation and these headings will be known as "protected characteristics." However the amount and type of protection these characteristics will attract is varied and has been increased.

A few of the changes include

- extensions or changes to six of the seven types of potential discrimination which are,

- direct discrimination
- discrimination by association, EXTENDED
- discrimination by perception, EXTENDED
- indirect discrimination, EXTENDED
- harassment, AMENDED
- harassment by third parties EXTENDED
- victimisation. AMENDED
- the definition of gender reassignment is extended to apply to those who intend to live permanently in the opposite gender to their birth sex.
- it will be easier for someone to show if they are disabled
- pre employment queries about health and disability will be banned unless they are for particular “permitted purposes” the main ones being to see whether the employer needs to make reasonable adjustments for
 - an interview or other selection assessment or
 - an intrinsic part of the job.
- allowing hypothetical comparators for sex based equal pay claims
- making pay secrecy clauses unenforceable in relation to establishing if the salary structure is discriminatory
- giving employment tribunals power to make recommendations which benefit the wider workforce

Also don't forget that the basic framework of protection against direct and indirect discrimination, harassment and victimisation also applies in your business dealings with others such as its customers or suppliers.

For more details talk to us or take a look at these guides.

ACAS The Equality Act – What's new for employers <http://www.acas.org.uk/CHttpHandler.ashx?id=2833&p=0>

National Minimum Wage Rates Increase.

New rates of National Minimum Wage, came into force on 1st October 2010:

- £5.93 per hour for low paid workers aged 21 and over (previously from age 22) (a 2.2% increase on the previous £5.80 rate);
- £4.92 per hour for 18-20 year olds (a 1.9% increase on the previous £4.83 rate); and
- £3.64 per hour for 16-17 year olds (a 2% increase on the previous £3.57 rate).

It's going to ruin us

Many employers are faced with financial pressures at the moment. I have heard many say that they can't afford to pay someone compensation to settle an employment claim. Unfortunately if it comes before an Employment Tribunal a recent case showed that the tribunal won't take account of the employer's ability to pay in assessing how much compensation to award.

This harsh stance may change as the relevant legislation says that the amount awarded should be "just and equitable in all the circumstances having regard to the loss sustained by the complainant." It doesn't say the tribunal shouldn't take account of the employer's position and indeed the risk to other employees if the employer has to close. However for now the law is clear and an employer's ability to pay won't cut any ice.

Vetting changes to be vetted

In a popular move the Government is to review the criminal records and vetting and barring regime and proposes to scale it back to what it considers common sense levels. But where do we stand at the moment?

The Independent Safeguarding Authority “ISA” will also continue with its work making decisions about barring and maintaining the barred lists. However the Vetting and Barring Scheme will be halted and the first phase of registration due to commence in July 2010 has been halted pending the review.

In the meantime the new safeguarding regulations introduced in October 2009 continue to apply. These regulations include

- A person barred from working with children or vulnerable adults will be breaking the law if they work or volunteer, or try to work or volunteer with those groups.
- An organisation knowingly employing someone, who is barred, to work with those groups will also be breaking the law.

- If an organisation working with children or vulnerable adults dismisses a volunteer or staff member because of harming or being a threat to a child or vulnerable adult the employer must report this to the Independent Safeguarding Authority.
- In October 2009, the right to ask for an enhanced CRB disclosure was extended to all those who employ or use volunteers in 'Regulated Activity' (see our newsletter Autumn 2009). These organisations should continue to make pre recruitment checks including enhanced CRB checks where appropriate or required by law.

The ISA can be found at <http://www.isa-gov.org.uk/>

**Did you find the articles interesting? Or is there something else you would like to know about?
Give us a call or e-mail.**

Take care

Kirsten.

This newsletter looks at new cases and employment related matters, which are likely to be of interest to many. However specialist advice should be obtained before taking or refraining from taking action based on comments in this newsletter, which is only intended as a brief note. For more information or if you have specific concerns phone me on **01233 714055** or e-mail. kirsten@moon-and-co.co.uk.