

DIRECTORS' BRIEFING



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New employment law in 1999

● This briefing provides an overview of the developments in employment law in the year 1999 that are most likely to affect small and medium-sized companies.

Developments in many other areas of business law are covered in **New business law in 1999**, LA 7.

These briefings provide pointers to changes that might affect your business, but do not deal with issues in detail. If you need to know more, talk to your professional adviser, or follow the cross reference to the appropriate Directors' Briefing.

This briefing covers:

- ◆ New laws.
- ◆ New regulations.
- ◆ Key court and tribunal cases that highlight small business issues.

1 Employment relations

The Employment Relations Act 1999 covered a wide variety of employment issues.

A Maternity leave (see **Maternity issues and SMP**, HR 22). Employees whose expected week of childbirth (EWC) is on or after the week commencing 30 April 2000 are entitled to:

- ◆ Eighteen weeks (previously 14 weeks) of ordinary maternity leave.
- ◆ Up to 29 weeks of additional maternity leave, provided they have at least one year's service (previously two) by the 11th week before EWC.

Employees must take at least two weeks' leave (compulsory maternity leave) within the period of ordinary maternity leave.

Effective 15 December 1999.

B Parental leave.

Employees who have completed one year's service are entitled to 13 weeks' unpaid parental leave for each child born or adopted after 15 December 1999.

- ◆ The leave must be taken within the child's first five years (or before the child reaches age 18, if he or she is disabled). If the child is adopted, leave must be taken within five years of adoption, or before the child reaches 18, whichever is earlier.
- ◆ The leave must be taken by agreement with the employer. If agreement cannot be reached, there is a fallback arrangement. Among other rules, not more than four weeks' leave may be taken per child per year, and 21 days' notice must be given.
- ◆ Except for two weeks on the birth or

FURTHER HELP

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Updated 17.11.00 (A)

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adoption of a child, parental leave can be postponed by the employer for up to six months if the business would be seriously disrupted. Any postponement must be justifiable at an employment tribunal.

Effective 15 December 1999.

C Leave for family reasons.

Any employee is entitled to time off work (unpaid) to deal with an emergency involving a dependant — eg illness or accident, a partner having a baby, or making arrangements for longer-term care.

- ◆ The time off must be reasonable — usually a day or two, rather than a fortnight.

Effective 15 December 1999.

D A ban on discrimination by omission against employees (ie leaving them out) because of their membership (or non-membership) of a trade union, or their trade union activities.

Effective 25 October 1999.

E Provisions on an employee's right to be accompanied during disciplinary or grievance procedures.

Effective 4 September 2000.

F Provisions on ballots and notices relating to industrial action.

Effective 18 September 2000.

2 Welfare and pensions

The Welfare Reform and Pensions Act 1999 introduced substantial changes in three areas.

A Provisions for stakeholder pensions, to provide a simple, low-cost alternative to traditional pension arrangements.

- ◆ With limited exceptions, all employers with five or more employees must designate a stakeholder scheme for their employees and facilitate access by way of payroll deductions if asked. See **Stakeholder pensions**, HR 33.

Effective 1 October 2001.

B Provisions for pension-sharing on divorce.

- ◆ Pension scheme trustees will have to provide information on employees' pension entitlements on request, within certain time limits.

Effective 1 December 2000.

C Provisions to ensure that pensions cannot be treated as part of a person's estate on bankruptcy.

- ◆ Pension rights within an approved pension scheme cannot be forfeited.

Effective 29 May 2000.

- ◆ Similar protection is to be extended to other pension rights, at a date to be announced.

3 Tax credits

The Tax Credits Act 1999 was aimed at encouraging people to take jobs, rather than relying on benefits.

A It introduced the Working Families' Tax Credit and the Disabled Person's Tax Credit.

- ◆ These are measures to encourage parents and the disabled into employment by providing extra income.

- ◆ Employers will be notified by the Tax Credit Office of the amount that should be added to the pay packets of the workers involved.

These payments are set off against the PAYE, NI and student loan repayments due to the Inland Revenue.

- ◆ If the employer's payments in tax credits exceed the amount owed to the Inland Revenue, the employer can apply for additional funding (Form TC11).

Effective 1 April 2000.

4 Travel to work

The Finance Act 1999 implemented Budget proposals intended to influence the ways employees get to work.

A Measures to make provision of a works bus service tax free.

- ◆ The bus must have a seating capacity of 12 or more.
- ◆ The main use of the bus must be for qualifying journeys (journeys between home and work or between one workplace and another) by employees.
- ◆ The service must only be used by employees and their children.

B Bus fares provided by employers for qualifying journeys by employees (see A) are also tax free.

- ◆ So are parking facilities for cycles and motor cycles.

C Providing cycles or cyclists' safety equipment for the use of employees is also tax free.

LETTER OF THE LAW

The full text of all Acts of Parliament is available on the HMSO website at www.legislation.hmso.gov.uk, complete with explanatory notes and a search engine to help locate information quickly.

MORE INFORMATION

- ➔ See **Employment law: the basics**, LA 10.
- ➔ See **Employment contracts**, HR 4.
- ➔ See **Working time and the minimum wage**, HR 25.
- ➔ See **Maternity issues and SMP**, HR 22.
- ➔ See **Sickness issues and SSP**, HR 23.
- ➔ See **Discrimination**, HR 24.
- ➔ See **Discipline and grievance issues**, HR 18.
- ➔ See **Employment tribunals**, HR 21.
- ➔ See **Redundancy**, HR 20.
- ➔ See **Dismissing employees**, HR 5.

- ◆ The equipment must not be given to employees.
- ◆ It must be used principally for qualifying journeys (see **A**).

Effective 6 April 1999.

5 New regulations

A Minimum wage (see Working time and the minimum wage, HR 25).

- ◆ A national minimum wage of £3.60 an hour was introduced for workers over 21.
- ◆ Workers between the ages of 18 and 21 also became entitled to a minimum wage, but at a lower level.

Effective 6 April 1999.

B Working hours.

- ◆ Workers were given the right to four weeks' paid leave (including bank and public holidays), increased from the three weeks introduced in 1998.

Effective 23 November 1999.

C National Insurance contributions (see National Insurance and state pensions, TA 2).

- ◆ The employers' threshold was raised to £83 a week.

Effective 1 April 1999.

D Whistleblowers.

- ◆ Where employees are victimised for whistleblowing, they were given the right to full compensation for any losses incurred. In particular, the monetary limit on compensation for unfair dismissal following whistleblowing was removed.
- ◆ Employees must have first tried — and failed — to persuade their employers to end the dangerous or illegal activities on which they blow the whistle.

E Unfair dismissal (see Dismissing employees, HR 5).

- ◆ The qualifying period for unfair dismissal claims was reduced from two years to 12 months.

Effective 1 June 1999.

- ◆ The limit on the amounts that can be claimed in compensation for unfair dismissal was increased from £12,000 to £50,000.

Effective 25 October 1999.

F Pensions (see Company pension schemes, HR 7, and Executive pensions, HR 9).

- ◆ The 'earnings cap' was raised from £87,600 to £90,600.

Effective 6 April 1999.

G Loans to employees.

- ◆ The official rate of interest on employers' interest-free loans (on which tax has to be paid by employees earning over £8,500 a year) was cut from 7.25 to 6.25 per cent.

Effective 6 March 1999.

7 Case law

These cases have been selected because they are potentially important or interesting to small and medium-sized companies.

Decisions in the House of Lords (HL) take precedence over those of the Court of Appeal (CA) and the Employment Appeals Tribunal (EAT), which take precedence over those in divisions of the High Court (eg Chancery or Queen's Bench Division). Decisions in the European Court of Justice (ECJ) take precedence over those in British courts.

A Dismissal (see Dismissing employees, HR 5).

- ◆ An employee could claim victimisation when her employer failed to give a reference, after she brought a discrimination case (settled out of court), alleging she was unlawfully dismissed because of pregnancy. (She was awarded £195,000.)

Coote v Granada Hospitality (EAT), 18 May 1999.

- ◆ Where an employee would suffer substantially worse terms and conditions as a result of his or her job being transferred under the TUPE regulations, he or she is entitled to object to the transfer, treat the contract as terminated, and sue the transferor for constructive dismissal.

Humphreys v Oxford University (CA), 20 December 1999.

- ◆ A temporary warehouse operative who suffered an ectopic pregnancy shortly after being offered a permanent post was unfairly dismissed when the job offer was withdrawn. Of the £7,800 awarded, £7,500 was for injury to feelings.

Berry v Potter Group (ET), 12 August 1999.

B Contracts of employment (see Employment contracts, HR 4).

- ◆ Staff employed on a casual 'as required' basis are not employees, and therefore not entitled to contracts of employment,

"Case law stemming from the European Court of Justice began to have an increasing impact on many aspects of employment law in 1999 — and it's a trend that is bound to become even more marked in future."

*Sue Nickson,
Hammonds solicitors*

because the mutual obligation is not strong enough.

Carmichael and Another v National Power plc (HL), 18 November 1999.

- ◆ Where a contract of employment provides for the cessation of share-option rights on termination, the clause is not valid if the employment is terminated unlawfully.

Levett v Biotrace International plc (CA), 10 February 1999.

C Minimum wage (see Working time and the minimum wage, HR 25).

- ◆ Companies based in one country within the EC and undertaking temporary work in another must pay the second country's statutory minimum wage. But they need not pay social security contributions there if they are already making similar contributions in their home country.

Arblade and Others Joined Cases C-369/96 and C-376/96 (ECJ), 23 November 1999.

D Part-time work.

- ◆ A woman 'made redundant' after refusing to increase her hours from 25 to 40 a week because of her child care responsibilities was unfairly dismissed and entitled to compensation.

Jones v Whitbread Walker Ltd (ET), 11 August 1999.

- ◆ Part-time workers are entitled to payment for the hours actually spent on attending certain trade union courses (in this case, a course for health and safety representatives), rather than merely receiving wages for their normal week.

Davies v Neath Port Talbot County Borough Council (EAT), 15 September 1999.

E Income tax (see Income tax self-assessment, TA 1).

- ◆ If a company pays one of its directors without deducting PAYE, and the Inland Revenue cannot get PAYE out of the company, it is entitled to pursue the director, whether or not he knew tax had not been deducted. The director could ask for a re-hearing or a judicial review, but would not be able to stop the Inland Revenue from getting the money merely because there was no proof of intent to evade tax.

Pawlowski (Collector of Taxes) v Dunnington (CA), 5 May 1999.

F Equal treatment.

- ◆ The courts may now go back up to six years in awarding compensation in equal pay cases, because the EAT found that the two-year limit set out in the Equal Pay Act 1970 penalises claimants under that Act, as compared with claimants under the Race Relations or Disability Discrimination Acts. It therefore breaches the principle of equivalence and is incompatible with European law.

Levez v T H Jennings; Hicking v Basford Home Fashions (EAT) 1 October 1999.

- ◆ Where two groups of workers with different qualifications perform the same duties, they should not necessarily be regarded as doing the same work. In a case involving two groups of psychotherapists employed by the Austrian social insurance fund, one group had degrees in psychology, while the other group were doctors.

The European Court of Justice said that different training could justify giving different pay for the same work, and that the doctors could be paid more, as they drew on different knowledge and skills.

Angestelltenbetriebsrat der Wiener Gebietskrankenkasse v Wiener Gebietskrankenkasse (ECJ), 11 May 1999.

- ◆ Paying a lump sum to a female worker to offset the occupational disadvantages of being away on maternity leave (such as missing out on performance related pay) is not contrary to the principle of equal pay in Article 119 (now 141).

Abdoulaye and Others v Regie Nationale des Usines Renault SA (ECJ), 20 October 1999.

- ◆ An employer who pays out a Christmas bonus must have regard to the equal pay provisions of Article 119 (now 141). If the bonus is paid retroactively, the employer can reduce the bonus to account for periods of parental leave (but not in respect of periods when work is prohibited to mothers who are breastfeeding or who have recently given birth).

Lewen v Denda (ECJ), 21 October 1999.

EXPERT CONTRIBUTORS

Thanks to **Audrey Williams** (Eversheds, 029 2047 1147);

Amanda Galashan (EmployEase, 020 7831 5052); **Georgina Hirsch** (Taylor Willcocks solicitors, 020 7240 0889).

- Employment law is complex and changes rapidly. This briefing reflects our understanding of the basic legal position as known at the last update. Obtain legal advice on your own specific circumstances and check whether any of the relevant rules have changed.

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