

Enterprise and Regulatory Reform Bill

The most significant changes to employment law this year will be made by the Enterprise and Regulatory Reform Bill (ERRB). This is currently going through Parliament and so is subject to amendment. The Bill is expected to pass into legislation in **April**. Its key provisions include:

- Enabling employers to hold “pre-termination negotiations” (otherwise known as “protected conversations”) where the employer can offer termination payments to workers knowing that a Tribunal cannot take them into account when considering a claim for unfair dismissal.
- Renaming Compromise Agreements as Settlement Agreements;
- A requirement to provide information to ACAS before lodging an Employment Tribunal claim form;
- Enabling the Secretary of State to cap unfair dismissal awards;
- Introducing penalties on employers who have breached employment rights where the breach has aggravating factors.
- That a worker making a protected disclosure (whistleblowing) cannot bring a claim for breach of contract unless there is a wider public interest.
- Repeal of Equality Act provisions on third party harassment and discrimination questionnaires.
- Reducing the statutory consultation period for collective redundancies where 100 or more employees are proposed to be made redundant from 90 days to 45 days.
- Giving employment tribunals the power to order an employer to carry out an equal pay audit where there has been an equal pay breach.
- Removing employers’ statutory breach of duty in relation to workplace injuries.

Other key changes:

February 2013

Increase in Compensation Limits from 1 February 2013

- Limit on amount of compensatory award for unfair dismissal – increases from £72,300 to £74,200
- Limit on a week’s pay – increases from £430 to £450
- Limit on guaranteed pay – increases from £23.50 to £24.20.

March 2013

Parental Leave

Increase in unpaid parental leave from 13 weeks to 18 weeks per parent per child from 8 March.

Third Party Harassment

Repeal of the Equality Act 2010 provisions on **third party harassment** (*NB this is a provision of ERRB so implementation date is subject to change*).

Questionnaire procedure

Repeal of the questionnaire procedure under the Equality Act 2010 so that workers can no longer submit a Statutory Questionnaire to employers to request further information in a claim for discrimination (*NB this is a provision of ERRB so implementation date is subject to change*).

April 2013

Employment Tribunal Rules of Procedure

Amendments include:

- Increased powers for employment Judges to strike out claims which have no reasonable prospects of success;
- Ability of employment Judges to make Deposit Orders in respect of each issue (e.g. unfair dismissal, disability discrimination unlawful deduction from wages) which has little reasonable prospects of success.
- Express provision to encourage parties to settle by way of judicial mediation
- Introducing tighter timetables or oral evidence.

Enterprise and Regulatory Reform Bill provisions

See page 1 and above.

Employee-shareholders

Provisions on employee-ownerships allow employers to offer an employee a contract entitling the employee to shares of a minimum of £2,000 in exchange for losing the right to claim unfair dismissal, request flexible working and statutory redundancy pay.

Public Sector Equality Duty

Report of the government's review of the public sector duties due to be published.

Personal Injury

Amendments to civil litigation funding and costs (Jackson Reforms) come into force.

Statutory pay and benefits

- Statutory Maternity pay, Paternity pay and Adoption pay increases from £135.45 per week to £136.78 per week.
- Statutory Sick pay increases from £85.85 to £86.70.
- Lower Earnings Limit (LEL) increases from £107 per week to £109 per week.

Summer 2013

Introduction of fees in Employment Tribunals. The proposed fees are as follows:

Fee Type	Level 1 Claim	Level 2 Claim
Issue fee	£160.00	£250.00
Hearing fee	£230.00	£950.00
Total	£390.00	£1200.00

Level 1 include claims for redundancy pay, unpaid wages, pay in lieu of notice.

Level 2 include claims for unfair dismissal and discrimination.

October 2013

- Abolition of the Agricultural Wages Board
- New National Minimum Wage rates

KEY CASES:

Below are the key cases anticipated for 2013:

Parkwood Leisure Ltd v Alemo Herron – decision from the European Court of Justice expected to be handed down on the **19 February 2013**. This case will determine whether or not employers are required to honour pay rises agreed under a collective agreement, where employment has transferred under TUPE to another employer who is not a party to the collective agreement.

Ladele and McFarlane v UK – decision from the European Court of Human Rights (ECHR) expected to be handed down 15 January 2013. Both these cases are claims for religious discrimination arising out of threatened dismissal and dismissal, respectively, when the employee refused to carry out civil partnership service and refused to counsel same sex couples on grounds of their Christian beliefs.

Eweida and Chaplin v UK ECHR

Both of these cases are claims for religious dismissal arising from the employer's refusal to allow the employees to wear a cross/crucifix in the workplace. Decision expected to be handed down 15 January 2013.

Devon Primary Care Trust v Readman – Court of Appeal

The court will decide on the test of reasonableness where an employee refuses an offer of suitable alternative employment in a redundancy situation.

Key2Law (Surrey) LLP v De'Antiquis

The Court will decide an appeal against the decision of the Court of Appeal which held that the fact a company is in administration does not prevent employees transferring under TUPE.