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earwiggin : employment law update

THE BUDGET 2009

Implication for employers

Last week's Budget included a number of announcements relevant to employers. The main ones are:

- **Increase in Statutory Redundancy Pay.** The Government announced a one-off increase in a week's pay from £350 to £380 for the purposes of calculating statutory redundancy payments. Once implemented, this will increase the maximum potential statutory redundancy payment to £11,400. No date was specified as to when the increase will take effect.
- **High Earners.** From 6 April 2010, the top rate of income tax will increase to 50% for individuals with taxable income over £150,000. In addition, the basic personal allowance for income tax will be reduced by £1 for every £2 of income above £100,000, meaning that individuals with an income of more than £112,950 will have a nil allowance.
- **Pensions.** From April 2011, the availability of higher-rate relief on contributions to registered pension schemes will be restricted for those earning over £150,000 per year. Additionally, those earning above £180,000 per year will only be entitled to relief at the basic rate, due to tapering.
- **Company Cars.** From 6 April 2011, the £80,000 price cap currently applicable when calculating an employee's car benefit will be abolished, making expensive company cars less tax & NIC efficient. Other changes include the removal of various discounts applicable to cars propelled by alternative fuels and the simplification of the rules relating to electric cars.
- **Penalties for late filings.** The new measures will include applying penalties for the first time to all employers who are late in making monthly PAYE and NICs payments. Employers may be liable for up to 5% of the unpaid taxes depending on the number of defaults in any 12 month period.

OPTING OUT OF THE 48 HOUR WEEKLY LIMIT

Recent Developments

Talks are continuing between representatives of the European Parliament and the EU Council in an effort to agree a compromise over the question of whether the right for workers to opt out of the 48-hour weekly limit on working hours should be retained. The final conciliation meeting is taking place today.

The use of opt-out agreements has been under threat for a number of years. In June 2008, the EU Council accepted a proposal to amend the Working Time Directive which, if accepted, would have placed restrictions on the ability of workers to enter into opt-out agreements. However, in December 2008, the European Parliament voted to reject the proposed amendments in favour of a complete prohibition on the use of opt-outs. A conciliation procedure was therefore initiated in an attempt to reach a compromise.

If agreement is reached at the talks today, the matter will go back to the European Parliament for a vote by the MEPs in May. If agreement is not reached, the status quo will be preserved and the opt-out will remain. Either way, we should know the outcome soon.

DATE OF TERMINATION

Kirklees Metropolitan Council v Radecki

The date when an employee's employment terminates is important for a number of reasons, not least because it will be the date when the employer will be entitled to stop paying them. But it is not always easy to identify what the correct date is, particularly when there have been prolonged negotiations over the terms of the employee's departure.

Mr Radecki was employed by Kirklees Metropolitan Council. Shortly after his employment began, he was suspended pending disciplinary proceedings. The parties held without prejudice discussions with a view to entering into a compromise agreement. These discussions envisaged a termination date of 31 October 2006. Despite the fact that a binding agreement had not been reached, the Council stopped paying Mr R from 31 October 2006. Mr R did not raise any objections about this at the time. However, several months later, the negotiations over the compromise agreement broke down and Mr R claimed that his termination date was 5 March 2007 (when the Council formally advised him that his employment had terminated). The Council argued that his employment had terminated when it stopped paying him.

The EAT previously found in favour of Mr R and held that the mere act of stopping salary was not enough to bring the employment relationship to an end. However, the Court of Appeal has recently overturned the EAT's decision and has held that Mr R's date of termination was 31 October 2006 when the Council removed him from the payroll.

The Court of Appeal's judgment is confusing and does not give clear reasons for its conclusions. In our view, it would be wrong to assume that the decision is authority for the proposition that the date of termination will always be the date on which the employer stops paying the employee's wages. As a result, when entering into severance negotiations, employers would be well advised to bear in mind that it may not be possible to back-date the termination date if the negotiations break down. A time limit on the negotiations should be set and consideration given to whether the individual's employment should be formally terminated if agreement is not reached by the end of that period.

EQUALITY BILL

Draft Bill published

The draft Equality Bill was published yesterday. If passed, the Bill will consolidate all the existing discrimination legislation into a single statute. The Government has stated that the Bill is due to take effect in 2010.

Some of the more significant changes in the draft Bill for private sector employers include:

- The Secretary of State will be given the power to require employers with more than 250 employees to publish information about the differences in pay between their male and female employees (the Government has indicated that it will not use this power before April 2013);
- A prohibition on the use of "secrecy clauses" in employment contracts prohibiting employees from discussing their pay with colleagues;
- Employers will be permitted to positively discriminate during recruitment in favour of disadvantaged groups when faced with candidates who are otherwise equally qualified;
- It will be possible for employers to be held liable if any of its employees suffer harassment at the hands of a third party (such as a customer) if harassment has occurred on at least two earlier occasions and the employer has failed to take reasonably practicable steps to stop it.

The Bill will now be debated by Parliament and it is quite possible that it will undergo significant changes before it becomes law.

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