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earwiggin : employment law update

RETIREMENT AGE

High Court rejects challenge to default retirement age

In a decision which has attracted widespread media coverage, the High Court has recently rejected the challenge led by Age Concern and Help the Aged against the provisions in the age discrimination legislation allowing employers to require employees to retire when they reach the age of 65.

The High Court ruled that the Government had demonstrated that a default retirement age of 65 could be justified when the legislation was introduced in 2006. However, the Judge indicated that, had the legislation been introduced in 2009, it would have reached a different conclusion.

Although this decision is welcome news for employers, the reprieve is likely to be short-lived. The Government will be reviewing the regulations next year to establish whether a retirement age of 65 can still be justified. It is expected that this will lead to the default retirement age being increased or removed altogether.

AGENCY WORKERS

PM to fast-track agency worker rights

Gordon Brown has signalled an intention to fast track new legislation to implement the Temporary Agency Workers Directive. Despite concerns over the rumoured £2bn cost of implementing this legislation, he pledged to take steps to introduce it within the coming months.

The legislation will give agency staff the right to equal treatment with directly employed workers in relation to basic working and employment conditions (e.g. pay, holiday, hours) after they have been engaged for 12 weeks.

We will set out a more detailed analysis of this new piece of legislation as and when the implementation timetable is confirmed by the Government.

MINIMUM WAGE AND WEEK'S PAY

Annual increases from 1 October 2009

The rate of a week's pay for the purposes of calculating statutory redundancy payments and unfair dismissal basic awards will be increased to £380 (from £350) from 1 October 2009 and will then remain unchanged until February 2011.

The new minimum hourly rate for workers effective from 1 October 2009 will be:

- £5.80 (rising from £5.73) for workers aged 22 or over
 - £4.83 (rising from £4.77) for workers aged between 18-21
 - £3.57 (rising from £3.53) for workers aged 16 or 17
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TUPE SERVICE PROVISION CHANGES

OCS Group UK Ltd v Jones

Since the introduction of TUPE 2006, it has been clear that the replacement of one contractor with another can amount to a "service provision change" and therefore trigger the application of TUPE. But what happens if the new contract requires significant changes to the services to be performed? Will this be sufficient to sidestep TUPE?

In this case, OCS was replaced by a new service provider (MIS) to provide catering services at a car plant. OCS argued that TUPE applied and therefore responsibility for its employees who were assigned to the contract automatically transferred to MIS. However, the tribunal and the EAT disagreed. It found that the new catering contract provided a substantially reduced meals service - instead of providing hot food, MIS was only required to sell pre-prepared sandwiches and salads. According to the tribunal, this meant that the services were "wholly different" and therefore there had been no service provision change within the meaning of TUPE.

Although this decision does not change the accepted position that TUPE will apply where the services are "fundamentally or essentially the same" following the transfer, it confirms that TUPE will not always be triggered when a contract changes hands. If there are significant changes in the way in which the service is performed, this may be sufficient to show that there has not been a transfer at all.

SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

The Safeguarding Vulnerable Groups Act 2006

The new Vetting and Barring Scheme is due to be launched on 12 October 2009. The Scheme is designed to ensure that anyone who presents a known risk to vulnerable groups is prevented from working with them.

For some FAQs on this topic, please see:

http://www.crb.gov.uk/faqs/vetting_and_barring_scheme.aspx.

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