

Client Alert

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Employment Law Update (UK): Summer 2013

By **Caroline Stakim**

A number of important employment law reforms are planned for this summer. Behind three of them is the Government's desire to reduce the volume of tribunal litigation in favour of alternative methods of dispute resolution.

1. 25 JUNE 2013: POWER TO FURTHER LIMIT CAP ON UNFAIR DISMISSAL COMPENSATION

In line with other years, in 2011/2012 the median unfair dismissal award was £4,560 and the average £9,133. Given this, the Government believes that the statutory limit for unfair dismissal claims (currently £74,200) suggests an unrealistic award amount. Therefore, from 25 June 2013, the Government has the power to limit the compensatory award for unfair dismissal further by capping it at the lower of 52 weeks' pay or the current statutory limit. A week's pay for these purposes is based on the statutory definition which means that, generally, the maximum award will be a year's gross salary excluding pension contributions, benefits and discretionary bonuses. A statutory instrument implementing the new rule is expected to come into force this summer.

2. 29 JULY 2013: INTRODUCTION OF EMPLOYMENT TRIBUNAL FEES

From 29 July 2013, claimants will be required to pay fees in respect of employment tribunal claims. Two fees will be payable: the first to issue the claim and the second to secure a hearing on the merits. For claims relating to unlawful deductions from wages, redundancy payments or other monetary claims, the issue fee will be £160 and the hearing fee £230. For unfair dismissal, discrimination and equal pay claims, the issue fee will be £250 and the hearing fee £950.

As well as discouraging litigation, the Government's justification for introducing tribunal fees is to lessen the burden on taxpayers by having users of the tribunal service contribute towards its running costs.

Unsurprisingly, the proposal has not been without opposition. Those against the fees argue that they are excessive and that, along with the fact that claimants in tribunal proceedings are generally unable to recover legal fees (even where their claim is successful), they will undoubtedly create a barrier to justice. Notably, last week the trade union, UNISON, announced its intention to apply for a judicial review of the Government's decision. Amongst its arguments is a contention that the proposed fees will make it prohibitively difficult for employees to enforce their rights, contrary to European law and will indirectly discriminate against women who are more likely to earn less than men. It seems that this debate is not over yet.

3. SETTLEMENT AGREEMENTS: NEW RULES FOR UNFAIR DISMISSAL CLAIMS

Compromise agreements, which are used to settle statutory employment law claims, are to be renamed "settlement agreements". In addition, details of negotiations and discussions between an employer and an employee will not be admissible in any subsequent unfair dismissal claim (other than automatic unfair dismissal

Client Alert

claims) provided there has been no “improper behaviour” on the part of the employer. Currently, these negotiations and discussions would only be inadmissible if they were held on a “without prejudice” basis and there was an existing dispute. The Government hopes that the new rules will provide employers with more flexibility when having discussions with employees about the proposed termination of their employment.

On 10 June 2013, ACAS (Advisory, Conciliation and Arbitration Service) published a revised draft statutory Code on the use of the new settlement agreement and it is expected that the agreements and Code will come into force this summer. The Code provides some guidance on what will be considered improper behaviour. As expected, this will include behaviour that constitutes harassment, bullying and intimidation or putting undue pressure on an employee. The Code also suggests a minimum period of 10 calendar days to allow the employee to consider the proposed settlement agreement and receive independent advice.

CURRENT STATUTORY RATES AND LIMITS

Statutory Payment	Amount
Statutory Maternity, Adoption & Paternity Pay	£136.78
Statutory Sick Pay	£86.70
National Minimum Wage	£6.31 for workers 21 years and over; £5.03 for workers aged 18 to 20
Type of Claim	Amount/Award
One week’s pay (where capped)	£450
Compensatory award for unfair dismissal*	£74,200
Redundancy payment	£13,500
Discrimination	No limit
Breach of contract in employment tribunal	£25,000
Failure to inform/consult in redundancy	90 days’ actual pay (no cap)
Failure to inform/consult in TUPE transfer	13 weeks’ actual pay (no cap)
Failure to provide employee liability information in TUPE transfer	£500 minimum for each employee (no maximum)

**Compensatory awards for unfair dismissal claims where dismissal is for health and safety or for making a protected disclosure are unlimited.*

Contact:

Caroline Stakim
44 20 7920 4055
cstakim@mofo.com

Client Alert

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