



News Story
28.09.05

A brief reminder of the new employment laws coming into force this week and focus on the Employment Equality (Sex Discrimination) Regulations 2005

A number of new employment regulations come into force with effect from 1 October 2005. These include:

- The Employment Equality (Sex Discrimination) Regulations 2005. Amongst other provisions, these regulations include a revised definition of indirect sex discrimination, a new definition of sexual harassment and harassment on the grounds of someone's sex, specific provisions making it clear that less favourable treatment of women on grounds of pregnancy or maternity leave is unlawful sex discrimination, the introduction of an eight-week time limit within which a respondent must reply to a sex discrimination questionnaire and extension of the protection for people who work overseas for a company in Great Britain (see further below).
- The National Minimum Wage Regulations 1999 (Amendment) Regulations 2005 increase! the adult rate of the national minimum wage (NMW) from £4.85 to £5.05 per hour. They also increase to £4.25 per hour the rate to be paid to workers who currently qualify for the NMW at the rate of £4.10 per hour (primarily workers aged between 18 and 21). In addition, the regulations amend the per day value of employer-provided accommodation from £3.75 to £3.90 for each day that accommodation is provided.
- The Compromise Agreements (Description of Person) Order 2005 extends the category of person validly able to give advice in relation to compromise agreements under the Disability Discrimination Act 1995 to a Fellow of the Institute of Legal Executives employed by a solicitors' practice.
- The Employment Relations Act 2004 (Commencement No 4 and Transitional Provisions) Order 2005 brings into force the remaining sections of the Employment Relations Act 2004 relating to trade union recognition and derecognition and industrial action.
- The Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2005 includes some persons not previously included, deletes others and amends the description of matters for which certain persons are prescribed under the Public Interest Disclosure Act 1998.
- The mandatory use of the new employment tribunal claim and response forms (ET1 and ET3 forms). Tribunals will no longer accept claims or responses lodged on the old forms.

Finally, note that the Transfer of Undertakings (Protection of Employment) Regulations 2005 will now come into force on 6 April 2006, not on 1 October 2005.

Employment Equality (Sex Discrimination) Regulations 2005

The Employment Equality (Sex Discrimination) Regulations 2005 are due in force later this week, implementing the EU Equal Treatment Directive through changes to the Sex Discrimination Act 1975 (SDA) and the Equal Pay Act 1970 (EPA). As the SDA and the EPA already satisfy many of the requirements of the Directive, the number of changes that have had to be made is relatively small.

Many of the changes are already in force as a result of existing case-law but will now be given legislative force. Other changes bring the SDA into line with the other strands of discrimination legislation.

The main changes are:

- The introduction of an amended definition of indirect sex discrimination to bring the definition into line with the definition which already applies to the other forms of discrimination, such as race and sexual orientation. There will now be a coherent approach to tackling indirect discrimination and the new definition brings out the elements of the test for indirect discrimination more clearly than the previous definition.
- The introduction of a new definition of harassment that includes both sexual harassment and harassment on the ground of someone's sex that is not sexual in nature. Harassment on the ground of gender reassignment is also covered. For the first time, it is now clear from the SDA, and not just from case-law, that harassment on the ground of a person's sex and sexual harassment are prohibited.
- Specific provisions making it clear that less favourable treatment of women on grounds of a woman's pregnancy or maternity leave is unlawful sex discrimination. This has been the legal position for some time as defined by case-law but previously there was no explicit reference to this sort of discrimination in the SDA.
- The introduction of a new eight-week time limit within which a respondent must reply to a sex discrimination questionnaire, which is the form often used by claimants to obtain information before considering whether to issue employment tribunal proceedings. Again, this brings the SDA into line with the other pieces of discrimination legislation.
- Extension of the protection for people who work overseas for a company in Great Britain. The SDA and the EPA are extended to cover employees who work for British organisations wholly outside Great Britain in relation to recruitment, terms and conditions, pay, promotion, transfers and dismissal where the work is for an organisation in Great Britain and where the employee is ordinarily resident in Great Britain, either when he or she applies for the job or at some time during his or her employment.
- Clarification that there is no need for a male comparator in equal pay cases concerned with pregnancy or maternity leave.

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