

news

Autumn 2008

Employment

Inside this issue:

- Spotlight on Redundancy
- New Equality Bill Proposed
- Maternity and Parental Leave Changes
- Immigration – Licence for Employers
- Minimum Wage and Personal Tax Allowance Update
- Agency Workers Update

Produced by the Employment team at Biggart Baillie LLP

Spotlight on Redundancy

In light of the current market conditions, we thought it would be helpful to provide an overview of redundancy procedures.

The process differs slightly depending on how many employees are involved, but we shall proceed on the basis of the following scenario:

“Mechanics R Us Limited employs 20 mechanics and 2 administration assistants. They have decided that due to a downturn in the market and a decrease in customer demand, they can only afford to employ 15 mechanics. They still need both administration assistants but understand that they must make redundancies to keep the business afloat.”

As an employer, the Company has an obligation to consult with, and give advance warning to, individuals who may be made redundant. In the scenario above, 20 employees are at risk of redundancy as the pool of selection will be “all mechanics”.

The Company must then consider the following:

Selection criteria

These must be objective and capable of being verified against any records held by the Company. The criteria may include: attendance records; time-keeping; disciplinary records; targets

reached during the course of employment; and appraisals (if carried out by the Company). We would advise not to include length of service as this may imply some form of age discrimination.

First Meeting

The Company should arrange to meet all 20 mechanics and advise them of the following at the meeting:

- The reason for the proposed redundancies;
- The pool of affected employees and the likelihood of 5 being made redundant (presented as a possibility rather than final decision);
- That alternative roles will be considered if there are any;
- The selection criteria that will be used;
- That the company will continue to look at ways to avoid redundancies and if any employee has any suggestions then to advise accordingly;
- Provide a written summary of the above and the selection criteria to the whole group of mechanics;
- Advise that the Company will be evaluating all 20 employees and then calling those with the lowest scores to a meeting to discuss potential redundancy.

At the group meeting, the Company should indicate that the

redundancies have not been finalised and that meetings will be arranged to discuss matrix

This article continues on page 2/

Free Seminar

Brave New World? A practical update on the latest changes in employment law.

Get a preview of the most significant forthcoming new rules and measures. We will also update you on the key developments in the area of employment law and HR in the course of 2008 including the changes in holiday pay, absence management and dismissal procedures.

Speakers:

Michael McLaughlin, Partner

Ingrid McGhee, Solicitor

Glasgow - Tuesday 7th October 2008 at 4.30pm.

Get full details and register at the link below:

<http://www.biggartbaillie.co.uk/employmentseminar.aspx>

The seminar will be held in our Glasgow office. To register, call our events team on 0141 228 8000 or e-mail events@biggartbaillie.co.uk. Spaces are limited, please book early to avoid disappointment.



Spotlight on Redundancy ctd.

scores, any suitable alternative roles and for the employees to make representations. The matrix scores should be calculated after this group meeting.

First Letter and Individual Meeting

The Company should score all employees against the selection criteria and those with the lowest scores should be invited in writing to a further meeting. The Company should ensure that the lowest scores identified are thoroughly checked and that it is unlikely they can be challenged or changed.

The letter should also confirm that they have provisionally been selected for redundancy (which

may result in the termination of their employment) on the basis of the selection criteria previously discussed and that a further meeting is required to identify ways in which the redundancy can be avoided. This will include examining alternative positions in the Company that may be appropriate to them.

At the meeting, the mechanics should be given the opportunity to comment on their scores, make suggestions on ways to avoid redundancy and to ask any questions about the redundancy process. If any of the mechanics make any submission about their scores, they should be considered at the meeting by the Company –

this may lead to scores being amended.

Written Confirmation

Assuming that the original 5 employees selected as “potentially redundant” are still those with the lowest score, then the Company should write to them and confirm their decision to make them redundant and notify them of their right to appeal the decision.

This is just a general overview of the basic requirements during a redundancy process. Our employment team are always at hand to answer any specific queries.

New Equality Bill Proposed

This Bill is still in the initial draft stages in parliament and will not formally be proposed before November 2008. It's aim is to create an easier law to manage and understand by bringing together nine major pieces of legislation and around 100 other laws, which deal with any form of discrimination (race, gender, disability, age sexual orientation, religion or belief) in a single Bill.

Key changes include:

- Plans to allow positive sex and race discrimination where appropriate;
- Harmonisation of all definitions of indirect discrimination throughout all forms of discrimination;
- Harmonisation of the standard for justifying direct discrimination by adopting the ‘proportionate means of achieving a legitimate aim’;

- Extend protection against harassment under the Race Relations Act 1976 to “harassment on ground of colour and nationality”;
- Ban “gagging clauses” which some companies have used to prevent staff from discussing their pay;
- A duty may be imposed on all public sector contracts to make figures showing the “gender pay gap” public;
- Tribunals may be authorised to make wider recommendations in discrimination cases;
- The Equality and Human Rights Commission (EHRC), trade unions and other bodies (with permission of the Court) may be encouraged to bring representative discrimination law actions.

This topic will be explored further at our forthcoming free seminar.

Maternity and Parental Leave Changes

The Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2008 amends the provisions of the Maternity and Parental leave etc Regulations 1999 and the Paternity and Adoption Leave Regulations 2002. These will apply to parents of children expected to be born or placed for adoption, on or after 5 October 2008. The amendments remove the distinctions between the rights of employees on ordinary maternity leave and those on additional maternity leave. This means a woman may have a claim if she is not afforded the same benefits/terms and conditions of employment, (except those relating to pay), during additional maternity leave as she is during ordinary maternity leave.



Minimum Wage

From October 2008:

- the adult National Minimum Wage (for those aged) will increase from £5.52 to £5.73;
- for 18-21 year olds the NMW will increase from £4.60 to £4.77; and
- for 16-17 year olds the NMW will increase from £3.40 to £3.53.

However, Gordon Brown appears to have given in to recent union demands that 21-year old workers should be moved onto the adult rate of the NMW. Following Labour's 2008 National Policy Form in July this year, it was agreed that official labour party policy should be changed reduce the age to 21 for workers entitled to the adult rate of NMW. It is hoped that this will take effect on 1st October 2009.

Personal Tax Allowance (2008/2009)

From 7 September 2008:

- The basic personal allowance for the 2008 – 2009 tax year increased by £600 from £5,435 to £6,035; and
- The basic rate limit (22% tax band) has reduced from £36,000 to £34,000.

Immigration – Licence for Employers

As all employers must now obtain a licence before employing a foreign national, we thought it may be helpful to outline how to apply for one.

Companies will have to apply for a licence online, which will cost £300 (if you are deemed a small sponsor) or £1,000. However, in order to obtain a licence, you will have to meet both "eligibility" and "suitability" criteria set by the Home Office.

The eligibility criteria requires businesses to provide the Home Office with a number of documents to prove that the organisation is genuine and has an operating or trading presence in the UK. If the Home Office is satisfied that a Company has passed the eligibility criteria, then they will apply the following "suitability" criteria to determine whether it has sponsor rating of either "A" or "B":

Eligible sponsors must :

- have effective human resource systems in place;
- not have been given a civil penalty for immigration offences;
- ensure the authorising officer, level 1 user and key contact (this will be an employee(s) you appoint to deal with specific sponsor roles who will have access to the sponsor management system that will be set up by the Home Office) does not have any criminal convictions listed by the Home Office; and they
- satisfy the Home Office that they have no evidence of previous non-compliance.

If a company successfully obtains a licence, the Home Office will issue certificates of sponsorship, which cost £170. However, this does not guarantee that a work permit will be granted for your foreign national as there are still further tests/criteria that an employee must meet before a permit is ultimately granted. Any employer should satisfy themselves that a foreign national would comply with and meet any further tests/criteria set by the Home Office before issuing a certificate of sponsorship.

Flexible Working

In our last newsletter, we mentioned that the Government had hoped to extend the right to request flexible working to parents with children under the age of 18. Unfortunately, the Bill failed to be passed in the House of Commons. However, the Government has recently indicated that this right will be extended to all parents with children under the age of 16 by April 2009.

One further change to the current arrangements will be the removal of the employer's obligation to give written notice to an employee agreeing the flexible working arrangements. However, the obligation to give written notice to an employee whose flexible request is refused will **not** be removed.



Team Contacts



Paul Brown
Partner

Accredited Employment Law Specialist
pbrown@biggartbaillie.co.uk
Tel: 0141 228 8000
Fax: 0141 228 8310



Alan Strain
Partner

Solicitor / Advocate
Accredited Employment Law Specialist
astrain@biggartbaillie.co.uk
Tel: 0131 226 5541
Fax: 0131 226 2278



Michael McLaughlin
Partner

mmclaughlin@biggartbaillie.co.uk
Tel: 0141 228 8000
Fax: 0141 228 8310



BIGGART BAILLIE
LLP

Agency Workers Update

The Temporary and Agency Workers (Equal Treatment) Bill had hoped to ensure that an agency worker had the right not to be treated less favourably than direct workers, by an employment business, employment agency or end user, in respect of their working conditions. However, the Bill was withdrawn in May this year as a result of an agreement that has been struck between the Government, unions and employers that will see agency workers in the UK receive equal treatment after 12 weeks employment.

An agreement was reached on the following points:

- After 12 weeks in a given job there will be an entitlement to equal treatment.
- "Equal treatment" will mean at least the basic working and employment conditions that would apply to any worker who had not been engaged via an employment agency or business.

- It will not cover occupational social security schemes.

The Government will also be consulting further in relation to the following:

- Mechanisms for resolving disputes regarding the definition of equal treatment and compliance with the new rules;
- Arrangements to enable the industry and the public services to reach the appropriate agreements on the treatment of agency workers;

The Government hopes to discuss the agreement with its European partners to agree the terms of the Agency Workers Directive that will enable this agreement to be brought forward into legal effect in the UK. The Government hopes the EU agreement will be obtained in time for the next parliamentary session.

All about Casecheck

www.casecheck.co.uk is a great resource that can keep you updated with the latest summaries of case reports, Employment Tribunal Decisions and House of Lords decisions.

Biggart Baillie provides expert opinions on selected cases reported in the employment section. Subscription is free of charge and you will receive a weekly round up in your inbox.

Employment Law Alerts

Look out for our emails that keep you updated with the latest developments in Employment Law. If you don't receive them and would like to, send us an email to the address below.

Reading a Hard Copy?

If you would like us to email this newsletter to you, please send your details to:
marketing@biggartbaillie.co.uk



We publish weekly employment law alerts on our website.



www.biggartbaillie.co.uk