



Employment Updates 2009

Maternity Rights

Some three months ago, almost all the differences between ordinary maternity leave (the first 26 weeks of leave) and additional maternity leave (the next 26 weeks) have been removed.

Perhaps the only practical difference now left is that the right to return after ordinary maternity leave is a right for a mother to return "to the job in which she was employed before her absence" whereas after additional maternity leave it is still a right to return either to that job "or, if it is not reasonably practicable for the employer to permit her to return to that job, to another job which is both suitable for her and appropriate for her to do in the circumstances". However, the Government is now considering removing this difference also.

Also, the EC are proposing that compulsory maternity leave should be increased to 18 weeks, six of which will have to be after the birth (at present in the UK this is just two weeks). The other 12 weeks will be available either before or after the birth.

Incapacity Benefits

Incapacity Benefit and Income Support paid on incapacity grounds are now being phased out. Successful claimants now receive an "Employment and Support Allowance". Those already receiving Incapacity Benefit or Income Support will continue to receive those benefits for the time being provided that they satisfy the entitlement conditions.

The main difference between the two systems is that the new one focuses on what work the claimant can do rather than on what he or she can't do.

All applicants, except those severely ill or disabled, must now take part in a 13-week assessment which includes a "Work capability assessment" carried out at a Medical Examination Centre by a doctor or nurse approved by the Secretary of State (i.e. not their own GP).

Health & Safety Offences

The Health and Safety (Offences) Act 2008 comes into effect on 16th January 2009, and increases the maximum penalties for certain health and safety offences.

In particular it increases the maximum fines which a Magistrates Court can impose (generally from £5,000 to £20,000) and gives Magistrates Courts power to impose prison sentences in serious cases.

Increased Limits

From 1st February 2009, the maximum amount of a week's pay for the purposes of unfair dismissal basic awards, and for statutory redundancy purposes is increased to £350.

Also from that date, the maximum award by an employment tribunal for unfair dismissal is increased to £66,200.

Holiday Entitlement

From 1st April 2009, the statutory holiday entitlement to employees is increased to 28 days per holiday year (inclusive of bank holidays).

Summary of Employee Rights where their Employer is in Administration

An administrator has 14 days following his appointment to assess whether to adopt any of the employees' employment contracts.

An Administrator will be treated as having adopted an employment contract where the employee is retained and paid on his/her existing terms. In such cases, the Company is still the employer with the Administrator acting as its agent, and the employee's salaries and other contractual benefits must be paid unless and until that employment is terminated.

The following can be claimed from the National Insurance Fund after termination:

- arrears of pay up to 8 weeks capped at £330 per week;
- accrued holiday pay up to 6 weeks capped at £330 per week;
- a statutory redundancy payment.

The above references to £330 will be increased to £350 from 1st February 2009.

A statutory redundancy payment is calculated according to age, length of service and weekly salary.