



Employment Law Changes to Paternity and the Abolition of the Default Retirement Age

In recent years employers have become accustomed to having the deal with changes to employment law twice a year, but this April we have been hit with some quite fundamental changes which it is feared will place a heavy administrative burden on SME's.

The first change is the much publicised shake up of the paternity leave entitlement. As of 6th April Fathers of babies born or due after 3rd April 2011, will be entitled to take between 2 and 26 weeks' leave, providing their partners have returned to employment after 20 weeks or more.

Each parent can now potentially take six months off work. Fathers taking advantage of the new rules will see the first three months of their leave paid at the **statutory rate of £128.73** a week, while the last three months will be taken **unpaid**.

It is thought to be unlikely that employers will receive many requests for such leave, but in order to successfully manage any requests that you do have there are some key points that you need to consider:

- The employee must give you at least 8 weeks notice of their intention to take leave in writing
- You are **entitled** to request a signed declaration from the Mother stating her name, address, NI information and return to work date
- You may also request a copy of the child's birth certificate and details of the Mother's employers (but this information is given at the discretion of the employee)

In the short term it is important that you review the paternity policy you currently have in place so that employees are aware of the procedure they need to follow should they wish to take additional leave.

The second change which is likely to have much more of an impact immediately on employers is the abolition of the Default Retirement Age (DRA). What this means in reality is as of October 2011 it will no longer be legal to retire an employee at a certain age e.g 65. We are currently in a period of transition, so unless you gave your employees notice of their impending retirement by 5th April, 2011 you cannot now do so.

Going forward all employees (regardless of age) will need to be managed out of the business in the same way. This means that it is now more important than ever to have in place effective performance management systems, which include fair and consistent target setting and regular performance reviews.

You do not have to treat people of different ages exactly the same. However, they should be treated fairly and consistently ensuring that there is not more favourable treatment of an employee because of their age unless you can objectively justify the treatment as a proportionate response to a legitimate need.

It is also important to note here that for those employers who offer their employees insured benefits such as private medical insurance, these benefits will be exempt from the principle of equal treatment on the grounds of age so that it will be possible for employers to cease to provide or offer insured benefits to employees aged 65 or above, even if they continue working beyond that age. The age at which group risk insured benefits can be withdrawn will increase in line with increases to State Pension Age.

If an employee is performing poorly you should discuss this with them to establish the causes. Failure to address poor performance in older workers because, or in the expectation, that will be leaving soon to draw their pension will be seen as being discriminatory. Establishing the reasons for poor performance with an employee, regardless of their age, setting improvement periods and agreeing what training and development would help the employee meet your work or business expectations are key to effectively managing performance.

Up until now retirement has been seen by the Employment Tribunal as one of the fair reasons for dismissal, this is no longer the case. This does not however mean that retirement no longer exists, as older employees can still voluntarily retire at a time of their choosing and draw any occupational pension they are entitled to in line with the scheme's rules. Open discussion between employers and employees about future plans, conducted in an atmosphere of trust can help facilitate the transition from work to retirement for both the individual and the business. You still have the right to be able to plan for the future, so if you use your regular reviews as an opportunity to ask all employees of their plans and aspirations in the short, medium and long term you will not be treating anybody less favourably because of their age.

GMA Consultants Ltd are able to help you to amend policies in line with these changes or to implement a robust performance management system. If you would like to discuss any aspect of your people management, please contact Gemma on 07824668782.