

Allan Janes solicitors

Summer 2011

SEXISM IN THE WORKPLACE

Statutory Maternity, Adoption and Paternity Pay Increases

The standard weekly rate of Statutory Maternity Pay, Statutory Adoption Pay and Statutory Paternity Pay increased from £124.88 to £128.73 from 3 April 2011.

The weekly rate for days of sickness absence commencing on or after 6 April 2011 is increased from £79.15 to £81.60.

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The recent sacking of Sky Sports presenter Andy Gray serves as a salutary reminder to employees and employers alike that attitudes change and sexist banter is simply not acceptable.

The law protects employees from sexual harassment. Harassment is unwanted conduct that has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant or of violating the complainant's dignity. This includes behaviour by one employee towards another.

The definition of harassment in the Equality Act 2010 means that employees can complain of behaviour they find offensive even if it is not directed specifically at them, and the complainant need not possess the relevant protected characteristic themselves.

When an employer is considering dismissing someone on the ground of misconduct, whether dismissal would be fair or unfair will depend on whether it is reasonable for the employer to treat the misconduct as sufficient reason for dismissing the employee. Where an employee brings a claim of unfair dismissal, in reaching its decision the Employment Tribunal (ET) must consider whether the employer reasonably believed that serious misconduct had been committed by the employee and was the reason for the dismissal, whether the procedures followed by the employer were fair, and whether dismissal fell within the 'range of reasonable responses' open to the employer. Each case will be decided on its own merits and facts. Consideration will be given to whether the conduct in question, be



it an action or a failure on the part of the employee to do something, is specifically mentioned in the employer's disciplinary code of practice as amounting to gross misconduct, with the possible sanction of dismissal, and whether the employer has taken adequate steps to bring the code to the employee's attention.

Employers should ensure that all employees are aware that no form of harassment will be tolerated in the workplace, and have in place robust procedures for enforcing the policy. The possible sanctions should be made clear in your disciplinary code. Failure to take action is potential evidence of non-compliance with discrimination law in any future ET claim. Where a particular act or omission is deemed gross misconduct likely to lead to dismissal, this should be clearly stated and employees made aware of the application of the code.

We can advise you on how to create and enforce an effective anti-discrimination policy.

'PLAN FOR GROWTH' - CHANGES TO EMPLOYMENT LAW



The Government has announced that it is to repeal regulations that were due to come into force on 6 April 2011 extending the right to request flexible working to parents of children under the age of 18. The right is currently available to parents of children aged under 17, parents of disabled children under 18 and carers of certain adults.

The decision is just one of the measures included in the Government's 'Plan for Growth', which aims to allow businesses to grow, free from excessive and overly burdensome regulations. The number of

employees that would have benefited from raising the upper age limit to 18 was estimated at 288,000, at a cost to business of £0.5 million.

The Plan for Growth also states that:

- the right to request time to train will not be extended to employees of small and medium-sized businesses – i.e. those with fewer than 250 employees. It is estimated that this measure would have cost businesses up to £350 million a year;
- the dual discrimination rules contained in Section 14 of the Equality Act 2010 will not now be implemented. This would have cost businesses an estimated £3 million a year; and
- a consultation exercise will take place on removing the 'unworkable' requirement in the Equality Act for businesses to take reasonable steps to prevent persistent harassment of their staff by third parties, as they have no direct control over it. This move will save an estimated £0.3 million.

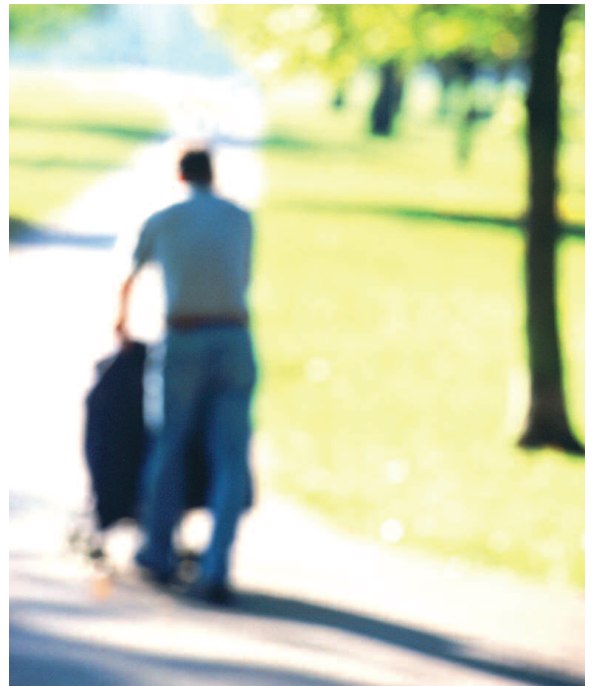
There will also be a moratorium to exempt businesses with fewer than ten employees and genuine start-up businesses from new domestic regulation for three years, affecting all regulation due to start from 1 April 2011 onwards.

ADDITIONAL PATERNITY LEAVE FOR NEW FATHERS

Employers are reminded that new rights apply to parents of children due to be born, or those notified that they have been matched with a child for adoption, on or after 3 April 2011.

The Additional Paternity Leave Regulations 2010 give new fathers the right to take additional paternity leave during the period which begins 20 weeks after the child's date of birth and ends 12 months after this date if the mother chooses to return to work with maternity leave outstanding and the father has the main responsibility for caring for the child. Some of the father's leave may be paid if it is taken during the mother's 39-week maternity pay period. The period of leave must be continuous; the minimum allowed is two weeks and the maximum 26 weeks.

The changes also apply to spouses, partners and civil partners of a child's mother or of an adoptive parent who has elected to take adoption leave.



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