

Newsletter

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Advocate-General Supports Retirement at 65

The European Court of Justice (ECJ) advocate – general has given his long awaited opinion on the Heyday case.

Heyday had sought to challenge the UK's default retirement age of 65. This means that employers can legally retire staff on or after their 65th Birthday. Employees have the right to request to continue working and employers have a legal duty to consider such requests.

The ECJ advocate – general concluded that:

“A rule..... which permits employers to dismiss employees aged 65 or over if the reason for dismissal is retirement, can in principle be justified under Article 6 (1) of Directive 2007/8, if that rule is objectively and reasonably justified in the context of national law by a legitimate aim relating to employment policy and the labour market.

The ECJ's advocate – general judgment is not formally binding but is a good indication of what the final decision will be.

A full hearing will take place at the ECJ. From there it returns to the UK, where the High Court will make the final decision on whether the mandatory retirement age can remain. However that final decision could still be up to three years away.

In the meantime it is strongly recommended that clients continue to use the model letters/notes for guidance contained in the AP Personnel Manual when dealing with retirement issues.

Avoiding Slips and Trips in the Workplace

During bitterly cold winter months with associated icy conditions a little thought and care needs to be taken when we consider the issue of slips and trips at work.

This is especially true for outdoor areas mostly used by staff/ visitors and most likely to be affected by ice, for example: – building entrances, car parks, pedestrian walkways etc. Slips and trips are often seen as a joke – you only have to think of ‘You’ve Been Framed’ to see that falling over is funny! In reality, they are the most common cause of major injuries at work, and account for a third of all reported major injuries. Nearly 11,000 workers suffered serious injury as a result of a slip or trip last year. Slips and trips cost employers over £512 million a year, with only a small proportion being covered by insurance.

Perhaps you're thinking that slips and trips aren't an issue in your workplace, or that they aren't really very serious. But with 95% of these injuries resulting in broken bones – that's broken arms, legs, hips and skulls – you can see that it's no joke. Many people also think that there's nothing they can do to reduce the risks and that these accidents are inevitable, but that is not the case. *(continued on next page)*

Exit Interviews

Exit interviews are the most commonly used means to determine why an employee chooses to leave. The question is are they reliable? Few employees will say things at an exit interview that will upset their employer taking the view that to offend them could jeopardise their reference and/or the chance to return to their previous employment if things do not work out. Most employees play safe and will give uncontentious reasons for leaving such as more money, better prospects, change of career and less travelling. A CIPD survey found that the most cited reasons for leaving were change of career 52% and better prospects/promotion 48%.

Is relying on this information misleading? Whilst we would not advise an employee to take the opportunity at an exit interview to spill the beans and tell the employer what they really think of them, yes the information is misleading as employees tend to provide more “socially acceptable” reasons for leaving and fail to identify the true causes for their decision to resign. We can all identify with someone we know who is dissatisfied with their lot and we would advise them to be honest, however the reality is this does not happen.

This issue emphasizes the need to be sensitive to both “push” and “pull” factors that may have influenced the employees decision. In order to collect accurate and effective data employers need to provide employees who are leaving with a forum that makes them comfortable in revealing the true reasons as to why they are leaving and encouraging them to give an honest critique of the expectations, working conditions and requirements of their job. It is also information essential to highlight the areas of perceived deficiency in the working environment (including potential grievances) and can then be used to plan effective retention strategies and actions often minimising the risk of litigation. *(continued on back page)*

Avoiding Slips and Trips in the Workplace (continued from front page)

As with most health and safety subjects, there are some very simple things you can do to control the risks. For example;

- Keep water or contaminants away from walkways.
- Stop the floor getting wet or contaminated in the first place.
- Quickly clean up any spillages or contamination that does get onto the floor.
- Ensure that the existing floor surface itself has enough grip.
- Replace the floor surface with one that has better grip.
- Make sure steps and slopes have good foot and hand holds and have no sudden changes.
- Make sure that things like poor lighting or glare don't prevent people seeing where they are walking.
- In icy conditions, put down grit or salt on outside paths and route ways.
- Consider if the work could be arranged differently to remove some of the risks.
- Consider vulnerable people such as the young and the old or people who may be inexperienced or have some impairment.
- Have good supervision, instruction and training to promote safe personal behaviour.
- Select suitable footwear for the conditions, work and individual.

LEGISLATION

As of 1 February 2009 the following limits apply:

A weeks pay for calculating tribunal basic awards and redundancy pay	£350.00
Maximum statutory redundancy payment and tribunal basic award	£10,500.00
Maximum tribunal compensatory award for unfair dismissal	£66,200.00
Maximum Guaranteed payment per day	£21.50

Forthcoming Legislation:

Date	Changes	Rates
1 April 2009	Statutory annual leave entitlement increases (this can include bank holidays)	5.6 weeks per annum
5 April 2009	Statutory Maternity Pay (SMP), Statutory Paternity Pay (SPP) and Statutory Adoption pay (SAP) will increase.	£123.06 per week
6 April 2009	Statutory Sick Pay increases	£79.15 per week
6 April 2009	Repeal of the Dispute Resolution Procedures. This repeals the much criticised statutory disciplinary, dismissal and grievance procedures. In their place comes a new ACAS code and guidance dealing with discipline and grievances. The new ACAS code returns to simpler procedures based on fairness and reasonableness on the part of the employer and employee. Although the ACAS code is not mandatory, a failure to follow its terms will lead to compensation being increased or decreased, rather than it being automatic unfair dismissal	
1 October 2009	New minimum wage rates	

THE EMPLOYMENT ACT 2008 RECEIVES ROYAL ASSENT

The Employment Act 2008 has now received Royal Assent and will bring about changes in the coming months to the way that disputes are handled by employers and Employment Tribunals. There are also greater powers for Government officers investigating National Minimum Wage offences and breaches of Employment Agency laws.

The most substantial change brought about by the Act is the repeal of the statutory Dispute Resolution Procedures, which have proven so unpopular since their introduction in 2007. This change will come into force on the 6 April and will have the following implications.

- It will no longer be an Automatically Unfair Dismissal to dismiss someone without following the statutory procedures.

- Employees will be able to bring a claim to a Tribunal without necessarily raising a Grievance first with the employer.
- Tribunal powers to award up to 50% compensation against a party not following standard procedures correctly are abolished.
- Employment Tribunals will have powers to increase or reduce awards by up to 25% where either party has 'unreasonably' failed to follow the relevant code of conduct; for unfair dismissal cases this will be the new ACAS code.

There will be several changes specifically affecting Employment Tribunals.

- Employment Judges will be able to process cases without holding a hearing when

both parties agree or if there is no contest.

- There will be powers to increase awards in cases of redundancy or unlawful deduction of wages in order to compensate for disruptions such as bank charges or lost interest.
- The duty of ACAS to conciliate is extended up until a judgment has been delivered.

The Act will also make the change that Enforcement Officers will be able to force employers to pay up to 50% of the total amount underpaid under the National Minimum Wage Regulations. This is a penalty charge with a minimum of £100 and a maximum of £5,000. The penalty is paid to the Secretary of State and is additional to the arrears awarded to the employee.

Disciplinary & Dismissal Procedure

With effect from 6 April 2009, the mandatory “three step” disciplinary and dismissal procedure and the requirement for grievances to be raised by an employee will be repealed.

What does this mean?

Disciplinary action against an employee

- The new ACAS Code does not have statutory force
- Failure to follow the Code will not make an employee’s dismissal automatically unfair (as it would have been had the employer failed to comply with the statutory “three-step” process)
- Employment Tribunals will take the Code into account when considering relevant cases and may increase an employee’s compensation by up to 25% where the employer has failed to comply with the guidelines laid down by the Code
- An employee’s failure to comply with provisions in the Code may lead the Tribunal to reduce any compensatory award by up to 25%
- The uplift/reduction will also apply in relation to the new grievance procedures laid down by the Code
- In most respects, the procedure laid down by the Code is no different from the current statutory procedure and the employer will still have to notify the employee in writing that disciplinary action is being contemplated, the right to be accompanied at a Disciplinary Hearing and the right of appeal against a decision made as a result of the Disciplinary Hearing.

Grievance procedure

- Again, the procedure is similar to that laid down by statute
- The employee will still have to notify the employer of the grievance in writing
- The employer must hold a grievance meeting with the employee
- The employee is entitled to be accompanied
- The employee has the right of appeal against the decision reached.
- The main reform is that an employee will no longer be barred from lodging an Employment Tribunal claim where they have failed to raise a formal grievance against the employer.

Main Points

- The guidelines laid down in the Code will only apply to disciplinary/grievance procedures that are raised from 6 April 2009 onwards
- Ongoing disciplinary action / grievances that were raised before that date will continue to be subject to the statutory procedures after 6 April 2009. The disciplinary guidelines laid down by the Code do not apply to individual redundancy dismissals or the expiry of fixed-terms contracts

Significant changes the new legislation will bring

At the moment, tribunal cases are decided at a Hearing by either a single Employment Judge or a Tribunal panel. Under the new legislation, Employment tribunals will be able to decide on cases without a hearing where the parties agree to this.

Also the forms for bringing and defending Tribunal claims ET1 and ET3 are due to be amended to reflect the changes in the law.

In conclusion

It is widely hoped that the new reforms will take away and dilute the complexities and bureaucracy that the “three-step” process has caused.

Job Sensitivity

In these days of job sensitivity it might be all important to have the right job title. Below are a few examples of job titles and what they mean in real terms.

Waste removal engineer	Dustman
Domestic engineer	Housewife
Knowledge navigator	Teacher
Stock replenishment advisor	Shelf Stacker
Dispatch services facilitator	Postman
Leisure services administrator	Masseur
Flueologist	Chimney Sweep
Head of verbal communications	Receptionist
Environment improvement technician	Cleaner
Education centre nourishment production assistant	Dinner Lady

Bosses face jail for health and safety breaches

Employers who breach virtually any health and safety law could face a prison term or fines up to £20,000 under new powers.

The penalties were only previously applicable to a small number of breaches but the Health and Safety Offences Act 2008 has broadened the power to cover almost all offences.

‘It is right that there should be real deterrent to those businesses and individuals that do not take their health and safety responsibilities seriously’ said Judith Hackitt, chairman of the Health and Safety Executive.

Exit Interviews (continued from front page)

Can exit interviews be improved? Are they merely a paper exercise or a genuine one to one meeting to encourage employees to share their opinions as honestly and candidly as possible.

Yes they can always be improved but in practice this is very difficult. Exit interviews are historically conducted by HR personnel normally through having the necessary interviewing skills to be able to do so however conducting an interview on an employees final day is fraught with difficulties and problems, including being time-consuming and not necessarily being undertaken consistently. Clearly exit interviews should be conducted by someone independent of the employees management and someone who can be trusted to ensure that critical comments are not personal but again in practice this is difficult. HR personnel normally have some involvement in producing references so are not always seen as wholly objective.

Exit interviews are also useful in providing information to enable HR to update job descriptions and person specifications and are generally trustworthy. Employees are more likely to be honest as they would not be seen to affect their references.

It is important to strike the right balance when putting together an exit interview. There are six key guidelines that should be kept in mind to ensure that the end result is useful and effective:

- Do not focus solely on the employees reason for leaving - although this is important it is also critical to include broader measures about the employees attitudes and experiences to help identify the issues and concerns that may not have surfaced
- Include open ended questions for the employee to include their own comments so as to get a full perspective on the decision to leave
- Implement and conduct consistently and in such a way as to encourage employees to share their opinions honestly and as candidly as possible
- Analyse the results not only on the basis of the individuals comments and views but for the organisation as a whole as well as on the basis of relevant diagnostics such as region, department or manager
- Remember there is an important distinction between idiosyncratic reasons for leaving over which you have no control and systematic reasons for leaving over which you can exercise control

Conducting the interview

- When conducting the interview ensure you are in surroundings that are relaxed and free from interruptions and distractions
- Be friendly, express regret that they are leaving, wish them success in their new job and encourage them to open up and be honest in their opinions
- This is an opportunity to change job descriptions so ask which tasks the employee considers vital, which have and have not caused the most problems, what part of the role needs to be changed to meet current and future needs
- On the person specification determine what different skills the replacement would need for example personality, flexibility

Well planned and executed exit interviews have the potential to become a valuable tool to help reduce turnover and increase employee satisfaction and commitment. In turn, a reduction in turnover has clear economic and organisational benefits.

They provide an opportunity to "make peace" with a disgruntled employee who might otherwise leave with vengeful intentions, are seen as a sign of positive culture if the organisation is big enough to expose itself to criticism, support the organisations HR practices, and provide useful data into training needs.

TRAINING COURSES 2009

17 March 2009 Half Day Employment Law Workshop Peterborough

Well Notes

In February 2008, the Government announced that sick notes are to be replaced by "well notes". According to the proposals, the well notes will show a list of tasks the employee is fit to carry out, instead of certificates signing them off.

For instance, a fork-lift truck driver with a broken leg may be able to perform other jobs in a stationary position at a desk in the company.

Will "well notes" work?

Occupational health professionals and doctors have reacted to the well notes proposals by saying that more emphasis should be put on improving access to occupational health services rather than putting the onus on GPs and the well note to cut absence rates.

They have raised a number of doubts about the scheme and feel that too little is being done to educate GPs and employers about the role of occupational health in returning employees to work.

The British Medical Association is also against the plan, but the Royal College of General Practitioners has called for greater training for doctors and more co-operation with specialists so they can recommend that employees return to work on light duties instead of remaining on sick leave.



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