

# Employment Law Radar

A new e-publication from DMH Stallard's Employment Group

Providing early warning about developing policy and legal changes in the UK and at European level that are likely to affect future HR planning, compliance and risk analysis.

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## Welcome

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**Employment Law Radar** is a new e-publication from DMH Stallard's Employment Group that gives you early warning about developing policy and legal changes in the UK and at European level that are likely to affect future HR planning, compliance and risk analysis.

If you have any questions or comments regarding any of the issues covered in Employment Law Radar, or would like to suggest areas that we could cover in future editions then please do get in contact with a member of our team.

## Our Knowledge Programme

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Employment Law Radar is part of our Knowledge Programme, which also includes:

**Breakfast Workshops** - bi-monthly sessions offering the chance to learn and debate in a small group environment

**HR Masterclasses** - half day workshops providing in-depth learning on legal topics

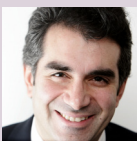
**HR Director Forum** - invitation-only events for HR Directors at which we and guest speakers look at strategic HR and employment law issues

**Monthly e-bulletins** - reporting on the latest news and cases

**Bespoke training**

## Contact Us

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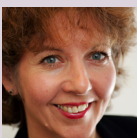
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## In the News

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### Unfair dismissal qualifying period

The Chancellor of the Exchequer announced plans to increase the qualifying period for unfair dismissal claims from one year to two years with effect from April 2012.

#### Populist move or bold stand on behalf of employers?

Time will tell, but some of you will remember that the qualifying period was reduced from two years to one year in 2000 after a successful challenge on the grounds of sex discrimination.

Leaving aside the question of whether the purpose actually addresses a real block on the recruitment of new employees, one concern is that employees whose protection against unfair dismissal is removed are more likely to pursue other remedies for which no qualifying period is required e.g. discrimination or whistleblowing claims, the consequence of which would be to reduce the amount of relatively simple and cheap unfair dismissal litigation and replace it with expensive and lengthy litigation on other grounds.

No amending legislation has yet been published so we do not know yet how any transitional provisions will work.



### New Employment Tribunal fees

In the same announcement, the Chancellor heralded new fees for employees wishing to bring claims in the Employment Tribunal, to apply from April 2013. No official announcement of fee rates has yet been made but they are reported to be:

- £250 to bring a claim
- £1,000 to proceed to a full hearing
- higher amounts if the claim is worth in excess of £30,000

The unemployed will be granted full or partial exemptions. Fees will be repaid if the claim is successful.

The Chancellor's statement raises a number of obvious questions:

- will all unfair dismissal claims fall into the over £30,000 category?
- will fees be repaid on settlement and if so, to who?
- what if one part of the claim is successful but another part is not?



## Important Forthcoming Cases

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### **Holiday and long-term sickness absence**

The relationship between holiday and long-term sickness absence will be examined yet further by the European Court of Justice (CJEU) which must answer the question of how long a worker on long-term sick leave should be entitled to accrue and be paid for (or in lieu of) annual leave? The Advocate-General's opinion was that the right should not be indefinite, that a national law imposing a limit of 18 months was compatible with the Working Time Directive but that a time limit of six months was too short. (KHS AG v Schulte)

### **TUPE and collective agreements**

Just when it seemed to be clear under UK law that changes to a collective agreement made after a TUPE transfer were not binding on a transferee, the question has been referred to the CJEU for determination (Parkwood Leisure v Alemo-Herron).

### **Discrimination and recruitment**

The CJEU is also due to make a decision on whether an employee who is qualified for a job but unsuccessful in applying for it has a right to find out why another applicant was appointed (Meister v Speech Design Carrier Systems).

### **Age discrimination and retirement age**

Although the statutory default retirement age has now been abolished, the question of what factors can justify compulsory retirement age remains relevant. The Supreme Court will look at the issue in early 2012 and, although the facts of the case relate to a partnership context, its decision will be illuminating for employers and partnerships alike (Seldon v Clarkson Wright & Jakes).

### **Claims by overseas employees**

The Supreme Court will address in November the issue of whether an employee who lived in Great Britain but worked wholly outside GB can bring a claim of unfair dismissal under the ERA 1996. This will be an important update on the principles first established in Lawson v Serco Limited in 2005 (Ravat v Halliburton Manufacturing and Services).

We will report on the final decisions in these cases and on their impact on employers in our monthly ebulletin.



## Other Policy and Legislation

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### Right to request time off to train

The Government has decided that this right will be retained for employees in large organisations (with 250+ employees) but that it will not be extended to employees in other organisations in the foreseeable future.

### Government review of TUPE, discrimination compensation and collective redundancy consultation

First announced in May 2011, this review is apparently ongoing and no outcome has yet been published.

## Proposals Under Consultation

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### The modern workplace

This sought opinions on changes to employment law aimed at encouraging a more fair and flexible approach at work, in particular:

- a flexible parental leave system allowing mothers and fathers to share leave and give parents and employers greater choice about how leave is taken;
- extending the right to flexible working to all employees but replacing the statutory flexible working request procedure with a Code of Practice on reasonableness;
- changes to the Working Time Regulations to allow carry over and rescheduling of annual leave in cases of sick leave and family leave absence; and
- tackling unequal pay through requiring employers who lose an Employment Tribunal case on equal pay to carry out a pay audit.

Consultation closed on 8 August and the government response is awaited.



### Immigration – Tier 1 and Tier 2 entrants

Although the numbers of entrants to the UK via Tiers 1 and 2 of the points-based system is already limited, the UK Border Agency is consulting on a proposal that, in future, only Tier 1 entrants will be granted an automatic path to settlement and that Tier 2 will be regarded as an entry for temporary migration only.

Consultation closed on 9 September and the government response is awaited.

## Proposals Under Consultation (cont.)

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### Resolving workplace disputes

This covered measures to:

- achieve more early resolution of workplace disputes without having to go to an employment tribunal;
- ensure that, where parties do need to come to an employment tribunal, the process is as swift, user-friendly and effective as possible; and
- help businesses and social enterprises feel more confident about hiring people.

Specific measures under consideration include:

- a requirement for all cases to go through ACAS before a tribunal claim is issued;
- introduction of fees for lodging tribunal claims;
- more flexible strike-out powers for tribunals;
- allowing formal offers to settle in tribunal cases with costs consequences if the offer is not beaten; and
- more cases being heard by an employment judge sitting alone.



### Directors' remuneration and focus

BIS has called for evidence from interested parties on a number of corporate governance matters. In a document entitled "A Long-Term Focus for Corporate Britain", it debates a broad range of topics, from the question of whether directors of UK companies have a sufficiently long-term focus, to the role of shareholders in the equity markets generally.

Against a background of data showing how director remuneration in FTSE100 companies has increased much faster than non-director pay, a number of specific questions are raised:

- should membership of remuneration committees be widened?
- are shareholders effective in holding companies to account over directors' pay? Specifically, should the government remove the provision in the Companies Act 2006 that exempts from shareholder approval any golden parachute or severance payment that is paid pursuant a pre-existing contractual arrangement?
- what would be the impact of greater transparency in relation to directors' pay in respect of:
  - linkage between pay and corporate objectives;
  - performance criteria for annual bonus schemes; and
  - relationship between directors' pay and employees' pay?

Responses are due by 14 January 2011.

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## About DMH Stallard's Employment Group

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DMH Stallard's Employment Group works hard to combine acknowledged technical excellence with an in-depth understanding of the organisations that we work with. Through this process we are able to understand our clients' needs, identify likely challenges that they will face, and build long-term productive relationships with them.

Our structure enables us to provide cost effective support; giving guidance on strategic and complex issues, as well as helping resolve day-to-day operational matters. We deal with day-to-day advice on operational matters and sensitive Employment Tribunal litigation, generally conducting our own advocacy. To help our clients, we provide know-how training and update sessions, with a particular focus on taking a practical approach.

The Group works with many high profile national and international clients in both the public and private sectors. Our expertise includes:

- Advice for Senior Executives
- Business Immigration
- Contracts, Policies and Procedures
- Discrimination and Equality
- Employment Disputes
- Equal Pay
- In-house Training
- Operational and Strategic advice
- Outsourcing and Shared Services
- Redundancy and Restructuring
- Senior Board Level Disputes
- Tribunal Representation
- TUPE and Post-deal Harmonisation
- Workplace Mediation

Long recognised as the leading employment practice in the South by both of the leading legal directories, the growing London-based team is now also ranked by both directories for the quality of its work.

*"Some of the best legal minds in the country. This team is praised for its strength in depth and covers the entire range of employment matters in a variety of contexts. It is singled out as housing excellent advocates and has handled various contentious claims for large employers."*

Chambers and Partners