



THE CONSEQUENCES OF BEING AN EMPLOYER

by **Seán R. Lamb – Practice Manager**

Employment law in the UK is becoming ever more complex with greater emphasis being put on the rights of employees. Increasingly, businesses have to devote valuable time and resources to ensure that they keep up with new employment legislation. The reality is that any failure to comply with the law could result in a Hearing at an Employment Tribunal and prove costly.

Below is a summary of the more common employment facts taken from current legislation. This is intended to highlight important areas of legislation and sets out the obligations of employers and employees. You may wish to check your own procedures and policies and bring them up to date if necessary. However, this information should not be regarded as a comprehensive statement of the law.

Should you require any assistance or wish a review of your procedures to be undertaken, then please contact the writer of this article.

SUMMARY

Statutory Minimum Notice Periods

Employer must give:

- 1 week of notice after 1 month of continuous employment
- 2 weeks of notice after 2 years continuous employment
- and thereafter 1 week of notice for each year of continuous service to the maximum of 12 weeks

Employee must give:

- 1 week of notice after 1 month of continuous employment

Unfair Dismissal

Every eligible employee has a right not to be unfairly dismissed. To be eligible an employee must:

- have been continuously employed for at least 1 year
- be within age limits
- not have validly contracted out of his rights (since 25.10.99 employees working under a fixed term cannot waive right to claim for unfair dismissal)
- not be within an excluded class

Potentially fair reasons for dismissal include:

- capability of qualification
- conduct
- redundancy
- to avoid breach of a statutory provision
- some other substantial reason

Redundancy

There are 3 possible reasons for redundancy:

- “Business Redundancy” – the employer has ceased or intends to cease to carry on the business for which the employee was employed
- “Place of Work Redundancy” – the employer has ceased or intends to cease to carry on that business in the place where the employee was employed
- “Employee Redundancy” – the requirements for employees to carry out work of a particular kind have ceased or diminished, or are expected to cease or diminish

Factors for the employer to consider:

- fair selection criteria
- duty to consult
- offer of suitable alternative employment where possible

To be eligible to claim a redundancy payment an employee must have been:

- dismissed
- continuously employed by the employer for a period of at least two years

Time Limits

Continuous service requirement for unfair dismissal claim	1 year
To bring claim for unfair dismissal	3 months from effective date of termination
Continuous service requirement for redundancy claim	2 years
To bring claim for a redundancy payment	6 months from date of termination of employment
Continuous service requirement for discrimination claim	none
To bring a claim of discrimination	3 months from the act of discrimination
To bring a claim for equal pay	6 months from date of termination of employment
To file a Notice of Appearance	21 days of receipt of Tribunal Claim

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Compensation Limits

Discrimination

Race	No upper limit
Sex	No upper limit
Disability	No upper limit
Equal pay	Difference between applicant's and comparator's rates limited to damages for two years prior to claim

Redundancy

Depends on age, number of years of continuous service (to a maximum of 20 years) and employee's weekly wage (presently £240 per week).

Working back from the date of termination allow:

- 1.5 weeks of pay for each year that the employee was not below the age of 41
- 1 week of pay for each year that the employee was between the ages of 22 and 40
- 0.5 week of pay for each year that the employee was between the ages of 18 and 21

Unfair Dismissal

Basic Award	Depends on employee's age, length of service and weekly pay. The maximum basic award is 30 weeks of pay (currently capped at £240 per week)
Compensatory Award	Maximum of £51,700
Additional Award	Where the employer does not comply with a Tribunal order to re-employ employee, between 26 and 32 weeks pay.

Maternity Pay

Statutory Maternity Pay (SMP) is payable by an employer for up to 18 weeks (26 weeks from 2003) to women who:

- have at least 26 weeks of service by the end of the fifteenth week before the baby is due, and
- earn at least £67.50 per week

First 6 weeks	90% of employee's average weekly earning
Remaining 12 weeks (18 weeks from April 2003)	Flat rate of £60.20 per week rising to £75.00 per week from April 2002 and then £100 per week from April 2003

Employers can deduct from their next payment of PAYE and NI contributions 92% of the SMP they have paid out in the preceding period.

Small employers (whose total gross NI liability in the last complete year before the qualifying week was £20,000 or less) can deduct 100% of the SMP they have paid, plus 5% to cover other costs.

Maternity Allowance

- payable to women who do not qualify for SMP
- payable by the Benefits Agency

Statutory Maternity Leave

All employees	18 weeks (minimum of 2 weeks after week in which birth occurs) rising to 26 weeks from April 2003
Employees with 1 year of service or more	Right to return to work up to 28 weeks after week in which birth occurred

Paternity Leave

This widely publicised benefit will entitle all male employees to two weeks of paid paternity leave, capped at £100 per week from April 2003.

Parental Leave

All employees, male and female, are entitled regardless of length of service to a period of 13 weeks of unpaid leave, which may be taken at any time within 5 years of the birth of the child. For female employees this may be added to maternity leave. No more than 4 weeks of parental leave may be taken in any one year.

Working Time Regulations

The basic rights and protections that the regulations provide are:

- a limit of an average of 48 hours per week which a worker can be required to work (however, workers can choose to work longer if they want to)
- a limit of an average of 8 hours of work in a 24 hour period, which night workers can be required to work
- night workers to receive free health assessments
- 11 hours of rest a day
- a day off each week or two days off every other week
- in-work rest breaks (of 20 minutes) if the working day is longer than 6 hours
- four weeks paid leave per year

There are exemptions from the Working Time Directive and the following are given as examples:

- Certain types of workers such as managing directors, other persons with autonomous decision-making powers, family workers or workers officiating at religious ceremonies - though these workers are not exempt from the annual leave provisions of workers, are exempt
- Likewise, certain industries such as air, rail, road, sea, inland waterway and lake transport, sea fishing, other work at sea and doctors in training are exempt
- The provision on the 48-hour maximum week can be bypassed if the employee voluntarily agrees to work longer hours provided that 'no worker is subject to any detriment by his employer because he/she is not willing to carry out such work'. This type of agreement should always be documented

National Minimum Wage

National Minimum Wage for workers of 22 and over	£4.10 per hour (£4.20 from 1 October 2002)
The youth rate from 18 – 21 year olds	£3.50 per hour (£3.60 from 1 October 2002)

Seán Lamb is practice manager of Gerald Edelman and advises both the firm and clients on all human resource issues.

MATTERS OF INTEREST by Colin Burns

Excuse the pun, but the cuts in interest rates over the last two years have given rise to the usual story – "first the good news" – yes it's cheaper to borrow – "second the bad news" – it's an awful time for investors relying on decent interest rates for a return on their cash investments, or for prospective pensioners about to buy their annuities. Here is a summary of two products that have been launched in the light of falling rates which exploit the "good news" and offset the affects of "the bad news".

Good News – Mortgage Rates

Two of the Country's largest lenders, Halifax and Woolwich, have launched 25 year mortgages at a fixed rate above bank base rate. Base rate as I write is 4% producing a low cost of funds. Set out below is a table with the key features:

Re-mortgage Fees Free options

Lender	Scheme Details	Interest Rate	Survey Fee	Legal Fee	Arrangement Fee	Tie-in Period
Woolwich	0.75% Above Bank of England base rate tracker for life of mortgage. This product is an OFFSET scheme. Clients can offset interest from the current account, which will run alongside the mortgage. Reserve facility available.	4.75%	£00.00	Woolwich will pay	£00.00	£95 + £500 in first 2yrs. After 2 yrs only £95.00 admin fee is charged. Daily interest calculation.
Halifax	0.55% Above Bank of England base rate tracker till 30/06/2004. Reserve facility available.	4.55%	£00.00	Halifax will pay	£00.00	No tie-in & daily interest calculation. £125.00 admin fee once mortgage account is fully redeemed.
Halifax	0.6% Above Bank of England base rate tracker till 31/06/2005. Reserve facility available.	4.60%	£00.00	Halifax will pay	£00.00	No tie-in & daily interest calculation. £125.00 admin fee once mortgage account is fully redeemed.

The above rates are for remortgages up to £1 million only and for loans to value of 70%. The purpose of the increased loan is irrelevant and excess equity up to 70% can be drawn down using the reserve facility. New purchasers get even better rates but have to pay for the survey. These deals are available through our appointed mortgage consultants, Independent Financial Management.

Bad News - Annuity Purchases

Most people know that they may save for most of their working lives towards a Pension Fund. Typically, they must draw benefits between the ages of 50 and 75. Usually, they take 25% of the Fund as a tax free lump sum. The rest of the Fund has to be used to buy an income for life ie, an annuity. A surviving spouse may be provided for but upon their deaths, the Fund is kept by the annuity provider, typically an Insurance company.

There are winners and losers under this system which allows the Insurance Companies to offer annuity rates well in excess of prevailing interest rates. However, annuity rates are a function of loan term interest rates which are at record lows. Prospective pensioners now find their Funds buying an income at two-thirds of the levels which it could have secured only five to ten years ago. The Government are aware of this massive problem and indeed, Cherie Blair now represents a 75 year old pension fund holder in the European Court who is claiming that enforced purchase of an annuity is a breach of human rights.

The law will change, of that there is no doubt. However, in the meantime a new Inland Revenue approved product has been released that is undoubtedly the forerunner and pioneer of many similar products designed to ensure that your Pension Fund ultimately ends up in your family's Estate rather than as part of an Insurance Company's profits. Here are the key features of the Challenger Open Annuity:

Key Features

- Pension income drawn from invested funds
- Minimum income level set by reference to market annuity rates at inception. Maximum income level set at annuity provider's discretion. Both maximum and minimum reviewed periodically.
- A conventional annuity must be bought if, at review, the invested fund is only sufficient to purchase a market annuity of 35% or less of the original minimum income.
- Segregated fund ("cell") created for each individual annuitant – no cross subsidy with others.
- Wide choice of funds links: all collectives must be approved by the Open Annuity insurer. The choice available includes an extensive list of funds from the UK's leading fund managers.
- Redeemable preference share bought for £1,000, at policy inception. This represents an interest in the Gibraltar based, single purpose insurance company.
- The assets in each cell are kept separate and identifiable, due to the company's structure, so there can be no cross subsidies.
- On death, this preference share is redeemed against the remaining value of the segregated fund (ie, the value in the cell). The original share investment of £1,000 is also returned.
- The amount paid to the estate on redemption of the share (including the £1,000) may be subject to inheritance tax unless received by your surviving spouse.
- Fairly expensive to set-up with an ongoing charge of 2% per annum of the fund.

(continued overleaf)

Aims

Approved by the Inland Revenue for pension transfers, this annuity includes the ability to:

- Invest in an extensive range of collective funds but not directly in property.
- Preserve the residual fund for the benefit of the annuitant's Estate.
- Avoid the obligation to purchase a conventional annuity at any age, as long as income levels satisfy the minimum income requirements.
- Retain the equivalent of an Open Market Option should a conventional annuity ever be required or desired.

Who

This is suitable for retirees who:

- Are able to accept some risk to the value of their income and pension capital. As performance is linked to that of collective funds, returns are not guaranteed.
- Are likely to have substantial income and capital resources outside the Open Annuity.
- Want investment choice and control.
- Want to preserve the Pension Fund for their Estate.
- Have at least £250,000 in their existing Pension Schemes.

Why

- Segregated cell arrangement enables Pension capital to pass to heirs.
- Choice of investment links not restricted to one fund manager's collectives.
- No obligation to transfer to a conventional annuity at any time, as long as income levels satisfy the minimum income requirements.
- Option to switch, at any time, to a conventional annuity basis – effectively the Open Market Option is fully preserved.

Further information is available on request but do remember this is a brand new product and concept. Undoubtedly, a saviour for those about to reach the age of 75 with a Pension fund over £250,000 who may have little other choice if they wish to preserve their Pension capital for their heirs. Those around the age of 72 or younger may wish to wait for the development of similar products in the market place.

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PROPERTY INVESTMENT

NEW PROPERTY INVESTMENT PRODUCT

A new way to invest in residential property in central London will appeal to investors who prefer the safety of bricks and mortar to volatile equity markets. First Property Investment (FPI), part of the Delph Property Group, is the first investment product of its kind to come into the UK market.

When an investor purchases a London property from FPI the company leases it back for a maximum 12 year term, in return giving the investor a 25 per cent reduction on the open market price, plus two per cent fixed annual income. FPI manages the property for the period of the lease and covers all outgoings. To provide flexibility in case of changing circumstances, there is a buy out option on the remainder of the FPI lease at any time after three years.

Potential tax advantages include capital gains tax taper relief, dropping from 40 per cent to 24 per cent for assets held for over 10 years. Flexible finance for a mortgage of up to 90 per cent is available through recognised lenders such as HSBC, The Royal Bank of Scotland and Clydesdale Bank, subject to status.

Depending on how this is structured it may be possible to defer or roll-up some, or even all, of the mortgage interest. This means that the investor may have little or nothing to pay out each month.

The Delph Property Group has been in property investment for over 50 years and has a substantial portfolio in London. This experience has been brought to bear on the selection of around 100 new, purpose built apartments in five popular residential locations: Wimbledon, Wandsworth, Kilburn, Battersea and MaidaVale. Prices range from £200,000 to £360,000.

Comments David Green, Head of Operations at FPI: "In a difficult economic period when many experts have recommended converting equity based investments into cash the FPI product is an attractive alternative to pension plans, Unit Trusts, ISAs, bonds or shares. We believe that our product represents a literally solid asset as a medium to long term investment because property prices in London have enjoyed a 30 year track record of stability and positive performance."

For further information please contact David Green at DELPH/First Property Investment, on 020 7907 5555 or dgreen@delphpropertygroup.com

ENTERPRISE BILL

Corporate Insolvency Proposals – Part Two

by Bernard Hoffman

The Government's view is that, on the grounds of both equity and efficiency, "the time has come to make changes which will tip the balance firmly in favour of collective insolvency proceedings. It follows that we believe that administrative receivership should cease to be a major insolvency procedure. We therefore propose to restrict the right to appoint an administrative receiver to the holders of floating charges granted in connection with transactions in the capital markets".

The government will introduce a specific power for the holder of a floating charge or other security comprising a significant part of the company's property to petition for an administration order without giving notice.

On such a petition the court may make an interim administration order under which an interim administrator would be appointed. The interim administrator will be required to report to court within 14 days of his appointment as to whether, in his opinion, an administration order should be made and, if so, the purpose which it is intended to achieve.

The government believes that it should continue to be open to the company to petition for an administration order as at present on notice to secured creditors (who will now have no right to veto) and other interested parties.

Other than in exceptional cases the government believes that three months is too long for the creditors to have to wait for information on the state of the company's affairs and for proposals to be put to creditors. It intends that this period be reduced to 28 days subject to the power of the court to extend it.

It is also intended to widen the purposes for which an administration order may be made to permit an order to be made to enable the realisation of the security of a floating charge holder whilst taking into account, as far as possible, the possibility of preserving all or part of the Company's business.

The effective right to veto the making of an administration order will be removed except in certain specified circumstances where the charge was granted in connection with transactions in the capital markets.

Abolition of Preferential Status

Crown preference in insolvency is to go, partly as a trade off for the disappearance of administrative receiverships and partly to make the prefs equal stakeholder in the insolvency process. Employee claims are to retain their present preferential status however.

There is a suggestion that the funds released by the abolition of Crown preference should be ringfenced, freed from the floating charge and available to unsecured creditors, how much is not clear.

COMMENT

It is understood that the corporate proposals may be susceptible to some adjustment.

The abolition of administrative receivership is softened by the enhanced status of the floating chargeholder in the administration process and by the abolition of Crown governance to be put in place to control administrators in the new regime. This is vital to secured creditors whose ability to realise security may be substantially interfered with unless the governance process strikes a proper balance.

With the EU Bankruptcy Regulation next May, it is perhaps appropriate that the scope of administrations is to be widened since, unlike administrative receiverships, administrations are a Euro recognised collective procedure for Regulation purposes.

Finally, in view of the proposals in that debenture holders will no longer be able to appoint administrative receivers to protect their interests, clients should carefully consider when lending money to companies the form of security taken and in view of the new proposals specific security on the company's assets will be preferable to a floating charge over the company's assets generally.

GENIE NOTABLE DATES 2002

2002 inside front cover of diary page

The eagle eyed amongst you will have noticed a printing glitch on the inside front cover of our 2002 diary. A number of dates had not been rolled forward by 12 months. Apologies for any confusion caused. Please find below the correct table as it should have appeared in the diary.

Date	Significance of Date	Employers	Individual Tax Payers	Partners & Sole Traders
31/01/02	Deadline for submission of 2001 tax return — late filers will be charged a £100 fine and charged interest on overdue tax		✓	✓
31/01/02	Balance of tax due for 2000/2001		✓	✓
31/01/02	First instalment re 2001/2002		✓	✓
28/02/02	5% surcharge due on unpaid tax for 00/01		✓	✓
05/04/02	End of Tax Year	✓	✓	✓
19/04/02	Deadline for settling 2001/2002 PAYE & NIC — interest will be charged from this date on overdue balances	✓		
19/05/02	Deadline date for Payroll Year-End Return — penalty of £100 per month for each 50 employees for any late P35	✓		
31/05/02	Deadline for getting P60 forms to employees	✓		
06/07/02	Deadline date for sending P11D forms to employees and the Inland Revenue	✓		
19/07/02	Deadline date for submission of Class 1A (National Insurance on cars) return and payment to the Inland Revenue	✓		
31/07/02	Second instalment of income tax and Class 4 National Insurance re 2001/2002		✓	✓
31/07/02	Another £100 fine for late submission of 2001 tax return		✓	✓
31/07/02	Further 5% surcharge due on unpaid tax for 00/01		✓	✓
30/09/02	Deadline for submission of 2002 tax return for tax to be notified by Inland Revenue on 31.01.03		✓	✓
7 Months after Year-End	Filing deadline for accounts of public companies at Companies House			
9 Months after Year-End	Due date for payment of Corporation Tax for small / medium companies			
10 Months after Year-End	Filing deadline for accounts of private companies at Companies House			

Correct at Time of Going to Press

COMPANY CARS AND FUEL

We have recently circulated a dedicated booklet on the fundamental changes to the taxation of company cars effective from 6 April 2002. We are often asked two questions on this subject.

Firstly, would an employee be better off with a company car or a cash payment instead? Secondly, should the employee be given free private fuel or should they pay for this themselves?

Set out below are some formulae, which if you follow through step by step, will give you the answer to these questions for any given situation.

"Free" Fuel?

Q: Your employees are given free fuel for their private mileage. Are they (and you) burning money?

A: For every driver, there is a break-even level of private mileage. If annual private mileage is below this level, it costs more in tax than the fuel itself. Try this calculation for your company driver:

$$B = \frac{s \times t \times 100 \times \text{mpg}}{f \times 4.55}$$

B is the break-even mileage
s is the scale charge
t is the employee's marginal tax rate
f is the fuel price (pence per litre)
mpg is average miles per gallon

Fuel Scale Charges 2001-02

Engine Size	Petrol £	Diesel £	
Up to 1,400cc	1,930	2,460	
1,401cc – 2,000cc	2,460	2,460	
Over 2,000cc	3,620	3,620	NB: The scale charges are to increase by 20% next tax year.

Company Car or Cash?

Q: Everybody is talking about paying cash and getting rid of company cars. How do you know if it's worthwhile?

A1: Do four basic calculations:

- net cost to the employee of providing an alternative (capital, financing, repairs, insurance, taxes, fuel—possibly a package deal – less tax relief)
- maximum tax-free allowances at the Inland Revenue authorised mileage rate for business mileage (first 10,000 miles at 40p, thereafter 25p per mile)
- saving to the employee from giving up the company car (tax scale charges at 22% or 40%)
- gross cost to the company of the company car (capital, financing, repairs, insurance, taxes, fuel, Class 1A NIC – less tax relief)

The minimum net extra pay needed by the employee to switch is (a-b-c). Gross this up for tax and employer NIC. If the answer is less than (d), a cash allowance could save both employer and employee some money.

A2: If that's too hard, ask Gerald Edelman. We'll also tell you what impact the new CO2 rules will have on your company car costs from April 2002.

GENIE COMMENTS & SUGGESTIONS



Phone your contact partner (or Kerry Fox on our editorial team) at Harley street on 020 7299 1400. We welcome your thoughts and ideas on how to improve future issues of GENIE.



You can contact our editorial team at genie@geraldedelman.com or visit us at our website at www.geraldedelman.com.



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