

Employment Law Q&A - UK

2010 was a busy year for the employment industry as we saw the continuation of the British Airways' staff strikes, which led to a negative impact on the airline and resulted in many disgruntled customers. There was also the implementation of the Equality Act 2010 in the UK. The British government discussed lifting the cap on the UK retirement age which will be effective in 2011. To find out more about employment law in the UK Lawyer monthly speaks to Catherine Gannon from Gannon Solicitors...



Q Has there been any regulatory change in 2010 regarding Employment Law?

It would be impossible to look back at 2010 without mentioning the Equality Act 2010, a major piece of legislation bringing together all strands of discrimination law for the first time. In general it is a welcome change, because it irons out many discrepancies in the law, and contrary to the publicity it has received, the areas of change are relatively few. It's a huge and complex statute, too big to explain here, so here are a few practical tips for employers:

- In disability cases, it's important to focus on whether any adjustments can reasonably be made, including providing equipment. It's still permissible to consider the cost of adjustments when deciding what is reasonable.
- Re-examine what health related questions are asked of applicants, as strict new rules apply in this area; and
- Where a job specification assumes, for example, that a person of a particular gender or ethnic background is needed, review whether this is still justified, because the new occupational requirement exemption may not cover all existing cases.

Q The recession has seen many people lose their job, have companies used the economic climate to lower their expenses by making employees redundant?

We have certainly seen evidence of this, but I would say that businesses are cutting costs across the board and not just concentrating on headcount. We continue to see creative thinking from employers who want to keep their skilled and experienced workers so they are ready to gear up when the tide turns. Along with outsourcing functions (which has significant legal implications under TUPE), employers are implementing pay freezes and even negotiating pay cuts, and offering sabbaticals and flexible working on an individual basis.

Q Has this led to many cases of unfair dismissal?

Undoubtedly; what surprises us is that employers still make procedural mistakes. While procedural errors no longer automatically make a dismissal unfair, they can still make a dismissal for perfectly sound reasons unfair, and result in higher compensation. It may seem obvious, but this is a typical example of how the right advice at the right time will save hours of management time, and of course legal fees.

Q With the retirement age in the UK to be axed, how do you think this will affect the economy of Britain?

My personal view is that keeping on experienced staff makes economic sense, and in the longer run, there is still going to be a shortage of young people coming into the workforce. The other side of the coin is that older workers are going to need to work later in life to bridge gaps in pension provision.

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Catherine Gannon

Q Do you feel this may lead to age discrimination?

I haven't seen any evidence that removing the default retirement age, assuming that happens in 2011, will change things. Some employers may still make stereotypical assumptions about older workers and get caught out, but case law so far suggests the courts are going to accept justification defences fairly readily – for example it has been accepted that it is legitimate to try and maintain an age balance where some jobs require a high level of physical fitness, and to open up opportunities for younger workers.

Q What do you feel were the top employment stories for 2010?

I would have to say that one of the big stories has to be the case of *Khatri v Cooperatieve Centrale Raiffeisen-Boerenleenbank BA*, and not just because

Gannons represented the successful claimant in this case. Bonuses have been big news this year, and this trend is one I am sure will continue. As financial institutions come under pressure to limit and justify bonuses (for example under the revisions to the FSA remuneration code), they are going to find themselves caught out by terms agreed in a different climate, or by practices which have in effect modified the written contract.

Pay transparency is going to be significant from the equal opportunities angle as well. Although the gender pay gap reporting obligation has not been implemented so far, as institutions are forced to disclose more and more detail, one of the traditional barriers to equal pay claims, lack of evidence, is going to fall. **LM**

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