

e-post

Updating you on employment issues



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Welcome to the February issue of *e-Post*.

For advice about any of the topics covered please contact [Martin Brewer](#), [David Mills](#), [Gillie Scoular](#) or your usual Mills & Reeve contact.

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Collective agreements have limited reach under TUPE

The Court of Appeal has decided that contractual terms are frozen following a TUPE transfer if they derive from a collective agreement to which the transferee is not a party. So where leisure service workers at Lewisham Council were transferred to the private sector, their new employer had to honour the rates of pay already fixed by the local authority collective bargaining machinery (including future increases already agreed) but not the new rates negotiated after the transfer date.

This decision overturns the Employment Appeal Tribunal in this case, as well as a number of earlier UK decisions. The change of tack is due to a judgment of the European Court of Justice in 2006 which looked at a similar situation in Germany, and favoured a "static" interpretation of collective agreements in the context of the parent EU legislation, the Acquired Rights Directive. The Court of Appeal's judgment provides welcome clarification to private sector employers to whom public sector workers have been transferred under TUPE: they now know the extent of their obligations towards these employees at the date of the transfer, and will not have to worry about terms subsequently agreed in collective bargaining in which they are not involved.



For the full decision (*Alemo-Herron v Parkwood Leisure Services Ltd*) click [here](#).

Fit notes arriving in April

The new-style "fit note" will be making its appearance in GPs' surgeries and employees' personnel files from 6 April. The shake-up of the old sick note system comes two years after the idea was suggested in Dame Carol Black's report *Working for a healthier tomorrow*. The Government hopes that the new system will make some inroads into the £100 billion that sickness absence is estimated to cost the economy each year. The new medical statement won't give doctors the option to state definitively that an employee is fit for work, but will enable them to specify the steps an employer could take (such as altering hours or amending duties) which might help an earlier return to work.



For the Government's response to the latest consultation click [here](#).

Supporters of the new system point out that fit notes will support constructive dialogue about returning to work while still leaving employers with the responsibility for deciding when the employee is fit to come back. Critics point out that the new regime will have limited benefits in the absence of a national occupational health service. Guidance to supplement the regulations is expected soon and the Government has promised an evaluation of the new system in 2012.

Agency workers regulations in place for next year

Regulations that will give agency workers a basic level of protection after 12 weeks' service have now been passed by Parliament, though they will not take effect until October 2011. The main idea is to make sure they benefit from the same basic terms and conditions as comparable permanent workers engaged by the same hirer. It has been difficult to define the limits of this new right, which is why the regulations are hedged around with some quite complicated qualifications and exemptions. In common with other so-called atypical workers holding fixed-term or part-time contracts, agency workers will also have rights to information about vacancies.

The new regulations raise a significant number of compliance issues for both suppliers and hirers of agency labour, but for once the Government has given them plenty of time to plan. However the regulations are far from a blank cheque for agency workers since important benefits such as pensions, occupational sick pay, maternity pay and some bonuses are excluded from the new regime.



For the Agency Workers Regulations 2010 click [here](#).

Paternity leave extended, but no extra cash

A complicated system of transferrable maternity leave was due to be introduced this April, but to ease the burden on businesses, this has been put off to April 2011. We now have a suite of six sets of regulations to implement this change, which will apply to parents of babies born or children placed for adoption after 2 April next year. The aim of these changes is to make it possible for a father meeting the eligibility requirements to take over the second six months of statutory maternity leave from the mother, plus any remaining entitlement to statutory maternity pay (SMP). The original plan to combine this with extending the maximum SMP entitlement to 12 months has been shelved on economic grounds. Similar changes will be made to the paternity leave regime for adoptive parents and civil partners.

The new regulations aim to adopt a "light touch" approach, relying heavily on self-certification. In any event the burden on employers will be relatively light if the Government has correctly estimated that no more than eight per cent of eligible fathers will take up this new right, and of these many will not take up their full entitlement.



For the Government's summary of the new regulations click [here](#).

And finally...

We would like to conclude with a mention of our latest electronic publication: [*Employee Share Incentives*](#). We aim to publish this two or three times a year, addressing topical issues on what we believe will become an increasingly important element of employee remuneration. If you would like to subscribe please e-mail theresa.hall@mills-reeve.com or register via our website using the link above.



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