

Employment and the Law

Notes From Lectures and General Reading

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December 9, 2002

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1 Role of the state

Lecture *September 25, 2002*

1.1 What is it?

- Organs of the state
- Government, education, welfare state, police, judiciary, armed forces
- Voluntarism
- State has minimal role in I.R.
- Employers & employees resolved issues
- Decline of Voluntarism
- In place of strike

- Industrial Relations Act (1971) *Note: It was a conservative party that introduced the concept of unfair dismissal.*
- Sweden – interventionist
- West Germany – non-interventionist

1.2 Two Types of Markets

1.2.1 Social Market

- larger role for the state
- no great legal regulation
- supported by one nation Tories, social democrats, labour.
- social market dominated 1945-1979
- in the social market, state intervenes to ameliorate and regulate worst aspects of market, e.g. taxes, laws, nationalisation, wages, councils, employment protection, ACAS, minimum wage, social charter.

1.2.2 Free Market

- dominated from 1979
- in a free market, state only intervenes to ensure free market
- no society just collection of individuals
- unions distort the market
- e.g. privatisation, deregulation, CCT¹

1.3 1979-1990

- radical shift
- 19th century liberal tradition
- tight monetary controls
- no direct intervention in economy

¹Compulsory Competitive Tendering

- no incomes policy
- high interest rates
- used deflation and unemployment to reduce wage claims and price inflation.
- cuts in public sector spending
- privatisation of public utilities
- CCT (compulsory competitive tendering)
- 3 million unemployed by 1983
- government would not talk to T.U.C. or C.B.I.
- free collective bargaining
- introduction of a restrictive framework of collective employment law
- deregulate labour market
- end of liberal collectivism
- end of partial corporatism of T.U.s

2 Acts

Lecture *October 2, 2002*²

2.1 1980 Employment Act

- repealed aids for T.U. recognition and collective bargaining.
- secondary picketing³ unlawful.
- closed shop more difficult. Many in the trade union disagreed with the closed shop.
- funds for elections

²Dave Edgars: It is the law we're talking about here, don't expect answer

³picketing is to pick on your employer

2.2 1982 Employment Act

- tightened law on closed shops
- s liable for damages from unlawful strikes.
- employers could sue T.U.s directly for loss incurred as a result of unlawful action. Had a huge impact on trade unions.

2.3 1984 Trade Union Act

- union executives had to submit themselves to secret ballot⁴ every 5 years.
- vote every 10 years for a political fund
- pre strike ballots before industrial action

2.4 1988 Employment Act

- T.U. members were allowed to obtain court orders to prevent industrial action called without a ballot.
- T.U. could not discipline members for not supporting industrial action.

2.5 1990 Employment Act

- made it easy to dismiss employees taking industrial action.
- all forms of secondary action unlawful and strengthened

2.6 1993 Turer Act

- ballots fully postal
- limits on exclusion of T.U. members.
- all notice of ballot and industrial actions must be given to employer
- increased protection for pregnant women. The government had to do this because of European Union legislation.
- protection on health & safety grounds

⁴avstemning, spørreundersøkelse

- consultation with trade unions for redundancy
- wage councils abolished

3 Trade Unions - reading notes

3.1 Union Membership - rights of members and non-members

from dti website (DTI 2002b)

- No individual is obliged to accept a requirement to join a trade union or to remain a member of a trade union, or to cease to be or not become a member, in order to obtain employment.
- It is not unlawful for TUs to not consider non-union members for union (paid) positions, however, if they do accept one to take a paid union position, they are not allowed to force this person to become a union member.
- if a employment agency refuses to help a worker, or does so on the requirements of trade union membership, it is unlawful.
- No employee is obliged to join, or remain a member of, a trade union. All employees have the right:
- not to be dismissed for not belonging to a trade union or for refusing to join one;
- not to have other action taken against them by their employer to compel them to be or become
- members of a trade union; and
- not to be chosen for redundancy because they are not members of a trade union.
- the employee's wages should not be deducted for union membership (when he's not a member) and the employer can neither deduct an amount for the purpose of charity.
- workers may be a member of a trade union and shall not be dismissed for being a member, or being penalised for doing so, and not be chosen for redundancy because they are a member.

- workers are in the same way entitled to take part in union activities at appropriate times and should not receive detriment for doing so.
 - industrial action DOES NOT COUNT as a union activity.
- self employed, armed forces, police forces and share fishermen cannot complain unfair dismissal.
- application of unfair dismissal should be sent within 3 months.
- trade union member that feels that the employer have deducted trade union subscription from his/her wages without proper authorisation, can complain to the employment tribunal.
- ACAS can do all kinds of conciliation
- Companies, local authorities and others are prohibited from imposing on contractors what have become known as union labour only requirements and recognition requirements.
- It is unlawful to organise, or threaten, industrial action (i.e. action which results in a breach of, or interference with, the performance of an employment contract) to establish or maintain a union closed shop practice .

3.2 Industrial Action and the Law

A guide for employees, trade union members and others from dti website (DTI 2000a)

- Dismissal for taking part in "protected" industrial action starting on or after 24 April 2000 is now unfair, may claim unfair dismissal.
- This does not apply if the industrial action cannot last for more 8 weeks and the employer takes reasonable steps to resolve the dispute.
- Industrial action is "protected" if an employee is induced to take it by his union and the union in doing so complies with the legal requirements governing the organisation of industrial action.
- union members may apply to court to not be included in union balloting.
- union members should be allowed to make up their own minds whether or not to take (or continue) industrial action.

3.3 Picketing

from dti website (DTI 2000b)

- There is no legal "right to picket" as such, but attendance for the purpose of peaceful picketing has long been recognised to be a lawful activity.
- Picketing is lawful only if it is carried out in contemplation or furtherance of a "trade dispute". A "trade dispute" is defined in law so as to cover the matters which normally occasion disputes between employers and workers - such as terms and conditions of employment, the allocation of work, matters of discipline, trade union recognition.
- The "statutory immunities" do not apply to protect a threat of, or a call for or other inducement of "secondary" industrial action.
- The law provides that it is lawful for a trade union official to picket at any place of work provided that:
 - he is accompanying members of his trade union who are picketing lawfully at or near their own place of work; and
 - he personally represents those members.
 - the official must be regarded for this purpose as representing only those members of his union whom he has been specifically appointed or elected to represent.
- In no circumstances does a picket have power, under the law, to require other people to stop, or to compel them to listen or to do what he asks them to do.
- If a picket commits a criminal offence he is just as liable to be prosecuted as any other member of the public who breaks the law. The immunity provided under the civil law does not protect him in any way.
- It is not the function of the police to take a view of the merits of a particular trade dispute

4 Fairness at Work

- part of the governments attempt to *replace conflict with partnership*

1. individual rights at work
 2. family friendly policies
- led to that UK got the worst employment laws in Europe.
...still the least regulated labour market in Europe...

5 Qualifying Period for Protection Against Unfair Dismissal

- reduced to one year
- reaction generally favourable
- TUC said:
...employment rights should apply from the first day of employment
- employers may use short term contracts
- NACAB⁵ argue that the qualifying period is
the dominant feature in the employment experience
of huge numbers of their clients.
- 84% of those dismissed with under two years service had no prior warning about their quality of their work.
- NACAB - qualification period but three months is suffice ? didn't get this line
- CBI
can see merit in the plans to reduce the qualifying period to one year ... but would strongly oppose any further reduction.
- IPD
the reduction will help to reduce employees' perception of insecurity and contribute to a more positive psychological contract

⁵NACAB useful source, org. for individuals that don't want to use trade unions etc.

will oppose any further reduction because probably the most important single indicator for many employers of the employment regulation

- BCC and FSB argue increased costs and possibility of employers using nine month contracts.
- ACAS
 - believes that the reduction will increase their conciliation case load.
 - but it should also "encourage the adoption of sounder based procedures for recruitment, selection and induction".

5.1 Limits on Unfair Dismissal Awards

- much more controversial
- compensatory award 12,000
- if it had risen in line with average earnings from 1971 it would have been 52,800
- dismissal on discrimination, no grounds NO LIMIT.
- CBI
 - “the removal of the compensation cap will make settlements outside tribunals less attractive and lead to an avalanche of new claims”.
 - the already well paid who will benefit from the removal of the cap.
- CBI and IPD propose 40,000
- TUC supports proposal and removal of the limit on a weeks pay used in calculation of a weeks pay in the basic award.
- current maximum is 220 per week⁶
- if indexed linked from 1965 it would be 800
- Law Society

⁶Number out of date

- civil law principle that a person who has suffered financial loss by reason of the legal wrong of another, should be fully compensated by the wrongdoer.
- government have capped the limit for unfair dismissal at 50,000.

5.2 Contract of Employment

- employer pays, employee works
- "what makes a contract is the offer and the acceptance"
- collective agreements
- whithley council
- local agreements
- express terms, agree on something out of the contract, e.g. instead of 9-17, 8-16.
- letter of appointment
- written terms
- custom and practice must be notorious, well known.
- Statue Law SDA⁷, RRA, ERA, HASAWA, EqPA
- Implied terms
- Common Laws Judges make the law, instead of governments. (not democratic). Dispute between an employer and an employee. Civil law.yy
- Duties of the Employer
 - to pay wages, even if the employee has been stealing and is suspended!
 - to provide work

⁷Sex Discrimination Act

6 Changing Employment Relationship

Lecture *October 9, 2002*

- Exchange pay for work
- Power relationship
 - Worker brings no equality or bargaining power to the relationship. (Wdderburn 1986)
- Frontier of Control
 - Range of issues over which workers have some influence (Batstone 1988)
- May have influence over pay but managemnt control resources.
- Consensus on many issues. Conflicts and concencus do exist. ...something missing.
- Not a free for all
- Regulation through – contract of employment statues and agreements with trade unions.
- Regulations an asymmetrical agreement, i.e...
- freely arrived at?
- Take it or leave it
- E.g. Pay Act *empdemms an equality clause*
- common law says that there nothing wrong with discrimination.
- parliament erodes contractual autonomy.

6.1 Psychological contract

- Is about expectations and assumptions
- Three kinds of expectations
 - The need from equity and justice.
 - A need for security and relative certainty.

- Need for fulfilment, satisfaction and progression (Mant 1995)
- Shifts over time is problematic (Herriot 1995)
- Employers seriousness about what is on offer, can they deliver?
- Employees feelings of powerlessness
- reconciliation of expectations?
- delivery will depend on organisation size.

6.2 Diversity of Employment Status

- Numerical flexibility
- Part-time, temporary or casual workers, home workers. Different descriptions: 'Peripheral workers', 'marginal workers', 'atypical workers'.
- functional flexibility
- removal of job demarcations, multi or dual skilling. Where people present their skills, and asks for a job, this is what I can do.
- introduction of 'job profiles'
- reward flexibility. a move away from incremental scale.
 - individual performance – merit pay,
 - profit related pay
 - performance pay.
 - profit sharing
 - employee share ownership.
- working time flexibility
- annualised hours, shift working, term time contracts, zero hours contracts, flex time.
- geographic mobility. location of employment, travel within working day, relocation within the UK, relocation overseas.

6.3 Discipline

- 1962 ILO recommendation - no termination of employment without valid reason.
- UK less procedural arrangements than other industrialised countries.
- discipline procedures common in the public sector and large organisations
- Donovan report 1968 - no means of redress against arbitrary dismissal.
- public discussion on 'job property rights
- 1971 industrial relation act. Introduced concept of unfair dismissal and compensation.
- relatively unchanged
- length of service requirements
- ACAS formed in 1975. Introduces code of practice.
 - Very influential.
 - code of practice of disciplinary procedures
 - 'admissible as evidence'
 - procedural fairness (Earnshaw et al 1998)
 - 92% of employers have procedures (Cully 1998)
 - no opportunity to defend themselves (the employees)
 - did not state the case against them (the employees)
 - not holding hearing
 - insufficient evidence
 - What they found was that management decision making not made without consulting personnel/Human Resources.
 - increased importance of Human Resources. Did not want to get to be known in the press as an unfair employer.

6.4 Dismissal

6.4.1 Definition of Dismissal

A dismissal occurs where

- the employee's contract of employment is terminated by the employer with or without notice; or
- the employee works under a fixed term contract and the term of it expires without renewal under the same contract; or
- the employee terminates his own contract, with or without notice in circumstances such that he is entitled to terminate it without notice by reason of the employer's conduct (Constructive dismissal).

6.4.2 Termination with or without notice

- problems with the form of words meaning of dismissing.
- "you are dismissed" -unambiguous
- "Go and get your cards" -unambiguous? Meant go and get your pay cards, insurance cards.
- "On your bike"
- "Go down the road" -Used in Yorkshire
- "Pick up yer jotters" -west of Scotland. Go and get your books, accepted in Glasgow area.
- However "Fuck off" means "Go away for the rest the day and come back tomorrow" (Fuddy V BRekkes 1974)

6.4.3 Reasons for dismissal indexdismissal!reasons

In accessing a complaint of unfair dismissal at an industrial tribunal the burden of proof lies

- with the employee to prove that they were dismissed;
- with the employer to show why the employee was dismissed. This reason must be the real, or principal reason for the dismissal decision at the time that the decision was taken, not some justification which occurred to the employer at a later state.

Only proof will be evaluated if they were available at the time of dismissal.

6.4.4 The Grounds for Fair Dismissal

- A reason related to capability or qualification. Often used in ill health situation.
- A reason which relates to conduct. Must dismissals comes under this one. Conduct can relate to performance labour, and outcome at work or outside work. It must relate to what they do at work.
- The redundancy of the employee
- Because of a contravention restriction imposed by statute.
- Some other substantial reason.

6.5 Fair or Unfair?

Lecture *October 16, 2002*

- Whether in the circumstances (including size and resources.
- employer acted reasonable or unreasonably
- treating it as sufficient reason for dismissal.
- determined by equity and substantial merits of the case.

6.6 ACAS

Discipline procedures

Legal status is that it's admissible as evidence. Procederly is taken as unfair dismissal.

Some fundamentals has to be followed: whether an employer believes that an employee has done something wrong. They have to suspend the individual *with pay*.

Suspend if the employee can tinker with the evidence. This is not a punishment, but to process the case as soon as possible, short as possible.

Natural fundamentals:

1. if someone is guilty of an offence, he/she has to know what their accused of. The nature of offence.

2. has the opportunity to defend its case.
3. the right of representation
4. right to appeal

7 Discrimination

7.1 Socio - economic changes Context of equal opps

Changing industrial structures and patterns of work.

- trends
- increased number of women working while their children are under five.
- decline in manufacturing jobs
- ...something missing
- many jobs are part time
- 63% population feel women should work part time while their children are at school
- 1992 survey found that 99% of women and 94% of men agreed/strongly agreed that women brought positive skills to the workplace.
- 1973 only 11% responded positively “if it was a good or bad thing if more women occupied senior positions”
- recession and booms of 1980s and 1990s
- “demographic time bomb”. Population is getting older
- 1960s baby boom – women were seen as a problem at work
- 1990s baby trough – woman a salvation, answer to recruitment issues.
- The discrimination laws are almost identical

7.2 Direct Discrimination

Less fair treatment.

Direct discrimination occurs against a person:

where if, on the grounds of that person's sex, they are treated less favourably than a person of the opposite sex would be treated;

or

in the case of a married person of either sex, if on the grounds of their marital status another person treats them less favourably than an unmarried person of the same sex

or

if, on racial grounds, another person treats him or her less favourably than other persons might be treated.

7.2.1 The House of Lords suggests a simple question

The but for test .

“Would the complainant have received the same treatment from the defendant but for his or sex (or race or marital status)”

DTI website ⁸

7.2.2 Genuine Occupational Qualifications

- physiology or authenticity
- decency or privacy
- live in employer's premises
- single sex establishments
- personal services for welfare
- restriction by law
- involves employment outside UK (cultures that demand male workers)
- job is one of two held by a married couple

⁸<http://www.dti.co.uk/>

7.3 Race Discrimination: Direct Discrimination and Victimisation

from ids brief Dec 2002 (IDS 2002d)

- quotes Race Relations Act 1976, definition of race discrimination. treat less favourably because of race.
- quotes again for victimisation. It is the same as above, but doing so because the employee has processed claims with the support of such an act.
- case in the IDS brief, is a black, female barrister, not getting promotion.

7.4 Race Discrimination: Finding the Correct Comparator

from ids brief Dec 2002 (IDS 2002e)

- Have to prove different, less favourably treatment to a person of a different origin, actually a hypothetical comparator.
- EAT ruled that no discrimination had taken place.
- Even though the treatment may be unfair, doesn't make it discriminating if everyone is treated unfair :-)

7.5 The EC Directive on Race Discrimination

From ilj vol 29 (Guild 2000)

- no definition of the concept of racial or ethnic origin in the EC directive.
- there's no religion in the RRA for the grounds of discrimination. However, Jews and Sikhs (but not Muslims) are defined as ethnic origin.
- harassment does not require a comparator.
- the EC directive does not have definition of the grounds of discrimination, racial and ethnic origin, leaves more responsibility on the courts to make the directive effective.

7.6 Employers' Liability for Sexual and Racial Harassment: Developing the Reasonably Practicable Steps Defence

From ilj vol 30 (Roberts 2000)

- since 1986, UK tribunals have interpreted the SDA to be used with sex/race harassment.
- two requirements for employer is responsible: harassment took place when the employee was employed by the employer when it took place and that the employer cannot prove that he/she took steps to prevent it that were "reasonably practicable".
- the employer can only do something, if he is aware of it.

7.7 The Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations 2001

From ilj vol 30 (Connolly 2001)

- def. of indirect disc. criterion or practice disadvantages a substantially higher proportion of the members of one sex, unless it can be justified by objective factors unrelated to sex.
- employer has the burden of showing that the criterion is appropriate and necessary.
- the formalisation of the burden of proof should make little difference in substance to cases of direct discrimination and no difference at all to indirect discrimination.

7.8 Sexual orientation and the Sex Discrimination Act 1975

From ilj vol 30 (Hannett 2001)

- highest civil appellate court in Scotland ruled that it was not a sex discrimination after the Sex Discrimination Act 1975 when a gay man was dismissed from the navy because of his sexual orientation.
- However, EAT ruled that it was.

- All three judges in the Court of Session, agreed that "sex" in the SDA only refers to gender and not orientation.
- Human Rights Act 1998
- right comparator was ruled to be a heterosexual woman.

7.9 Justification in Direct Sex Discrimination

From ilj vol 31 (Bowers & Moran 2002)

- there are general justification defences for fixed term contracts, indirect sex discrimination, disability and part time workers why not also *direct* sex discrimination?
- In the past, history, direct discrimination could be good, giving e.g. women 10 min leave earlier so they could avoid clash at the gates at work.
- UK law does not permit discrimination cases of underrepresentation of minority groups, but EU legislation does.
- the direct sex discrimination may occur because the majority of workers that are affected happen to be women
- the edgar example of the elderly couple at the swimming pool. Women got pension prices from 60 years of age, males had to wait till they were 65.
- if the UK law do get general justification defence for direct sex discrimination, it is *not* likely that it will affect women's equality.

8 Indirect Discrimination

Lecture *October 23, 2002*

Is not a covert direct or subtle discrimination. Occurs when an employer imposes a restriction on employment, which applies to both sexes, but is so that the proportion of one of the sexes are significantly higher than the other.

8.1 Discrimination against applicants

Discrimination can take place before the interview.

in the arrangements he/she makes for the purpose of determining who should be offered that employment

or

in the terms on which he/she offers him/her that employment

or

by refusing or deliberately omitting to offer him/her that employment

8.1.1 Sexual Harassment

- Sexual harassment is less favourable treatment with a sexual undertone.
- Is still a problem, but it's more out in the open now.
- What is the definition of sexual harassment?

9 Part time workers

- Part timer is someone whose "normal hours of work", are less than the "normal hours of work" of a comparable full time worker.
- piece workers excluded
- comparable full time worker
- same establishment, having the same type of employment contract, due regards given to seniority.
- right not to be less favourably treated than a full time worker.
- but can be objectively justified.
- any detriment should not include selection from redundancy. One of the reasons for redundancy cannot be that the worker is part time.
- no right to go part time after a maternity leave.
- however, it may be indirect sex discrimination
- any dismissal connected with part time work is "automatically unfair".
- burden of proof is with employer

10 Maternity Rights

Lecture *November 6, 2002*

The legislation was aimed to make sure that women were not unfairly treated. Not as good as in the EU.

Rights:

- to take maternity leave
- to get maternity pay, 90% of pay for six weeks pay
- to return to work after leave

Three categories of employees:

- employees with less than one year's service will be entitled to 18 weeks maternity leave.
- employees with more than one year's service have a right to return to work, up to after 40 weeks maternity leave.
- employees who qualify for either of the above and also have more favourable contractual arrangements.

10.1 Ordinary Maternity Leave

- All women are entitle to 18 weeks leave, regardless of length of service and hours of work.
- Women are entitle to all the contractual terms and conditions to which they would have been entitled, had she not been absent, except remuneration.
- Everything she has, she keeps. e.g. company car, mobile phone etc. As long as it's in the contract.

10.2 Maternity Leave Period

- cannot commence before 11th week before expected week of confinement *EWG*.
- it will be for the woman to decided when to commence her leave. However, it must commence on the date of the childbirth at the latest.

- childbirth is defined as the birth of a child, whether living or dead after 24 weeks of pregnancy.
- after 6 weeks before EWC where the woman is absent due to a pregnancy related illness, maternity leave is triggered automatically.

10.3 Maternity Leave - Notice requirements

- maternity leave lasts 18 weeks
- notice requirements
 - 21 days prior to commencement of her leave
 - she must give her employer written notice of pregnancy and EWC
 - there must be a medical certificate
 - the date of commencement of leave must be identified
- If the woman wishes to return to work before the end of the 18 week period, she must give the employer seven days notice.

10.4 employers' improvements on statutory maternity provisions

EOR Survey June/July 1995 of 240 organisations employing more than 2 million people

- 85% have improved upon statutory minimum
- 90% have improved upon pay and leave
- almost 50% offered 18 weeks leave instead of 14 weeks minimum under statute
- 80% improved upon statutory 40 weeks leave to women with 2 years service
- 78% paid on average equivalent of full pay for 14.1 weeks under statute 5.4 full weeks pay.
- approximately 0.75% of those who topped up maternity pay required the excess to be paid back if the employee did not return to work for a specified period.

- on average 3.3% of female staff went on maternity leave each year.
- Women are more likely to return to work in organisations that offer maternity provisions above the statutory minimum.
- where the employers offered improved maternity provisions, the return to work rate was 15% higher than where the statutory minimum was offered.

10.5 Pregnancy dismissal & sex discrimination

Brown vs. Rentokil

- Contract stated that dismissal would occur if absent for 26 weeks continuously.
- Pregnancy is a time when disorders and complications can occur and cause incapacity for work.
- Dismissal due to incapacity is based on the fact of pregnancy
- Such a dismissal can only affect women, therefore this is direct discrimination.
- Period from the start of the pregnancy to the end of maternity leave cannot be taken into account or computation of the period justifying her dismissal.
- After maternity leave her absence may be taken into account under the same conditions as a man's absence.

10.6 Pregnancy dismissal & sex discrimination

Weeb vs. EMO Air Cargo (CA)

- Whether the woman would have been treated the same as a man but for her sex...
- pregnant woman should be compared with a hypothetical male
- House of Lords: dismissal of female worker on grounds of pregnancy can affect only women and is direct sex discrimination

10.7 Part time

- Returners of maternity leave often choose to work part time when they come back.
- rely on indirect discrimination
- insistence of full time working is requirement or condition
- employers defence may be the requirement is justified
- e.g. job must be done by a full timer
- ONUs of proof is with the employer
- change, inconvenience not a defence
- however, there is no right to part time following maternity leave.
- can a father go part time

10.8 Maternity - notes

10.8.1 Maternity Leave - Changes - A basic summary

from dti website (DTI 2002a)

- for women whose expected week of childbirth (EWC) begins on or after 6 April 2003.
- 26 weeks' ordinary maternity leave
- regardless of how long they have worked for their employer.
- Ordinary maternity leave is normally paid leave.
- Women who have completed 26 weeks' continuous service with their employer by the 15th week before their EWC will be able to take additional maternity leave.
- Additional maternity leave will start immediately after ordinary maternity leave and continue for a further 26 weeks.
- required to notify her employer of her intention to take maternity leave by the 15th week before her EWC, unless this is not reasonably practicable.

- must tell
 - that she is pregnant
 - the week her baby is expected to be born
 - when she wants her maternity leave to start.
- earliest start of maternity leave will still be the 11th week before her baby is due.
- employer can no longer call and ask if the woman wants to return to her work after her full maternity leave.
- the end of her maternity leave will need to give her employer 28 days' notice
- entitled to more pay.
- Existing arrangements for employers to recover Statutory Maternity Pay (SMP) will continue - employers are able to claim back 92% of the payments they make, with those eligible for small employers' relief able to claim back 100% plus an additional amount in compensation for the employer's portion of National Insurance contributions paid on SMP.

11 family friendly employment

- enhance family life while making it easier for people - both men and women, to go to work with less conflict between responsibilities at home and work.
- Right to unpaid time off for emergencies
- Right to 13 weeks unpaid parental leave for each child.
- increase in paid maternity leave over 18 weeks.
- Aim to provide one million new childcare places.

11.1 survey

- Return to work permanent basis following maternity leave 23 of employers likely to agree.
- Almost 23 likely to agree to fixed period for lowering maternity leave.

- 12 employers would consider part time for other reasons.
- Determining factor for part-time working was operational requirements.
- Part-timers applying for full-time would have to apply for a vacant post.
- Training requires more planning.
- Rare to recruit part-timers.
- 15 have future initiatives planned.

11.2 The Employment Act 2002 - a guide

From blr vol 23 (Learmond-Criqui & Holt 2002)

- two weeks paid paternity leave
- maternity leave increased from 18 to 26 weeks.
- Amendments to the 1996 Employment Tribunals Act

11.3 Proposed for Family friendly regulations

From IDS brief 722 (IDS 2002c)

- ordinary maternity change from 18 till 26 weeks.
- possibility for the mother to take 12 months maternity leave in total.
- must inform employer before end of the 15th week before EWC.
- employer must inform employee of “end of leave period”
- will be removed: employee must inform employer whether or not she intends to return to the workplace after the maternity leave.
- ordinary and additional adoption leave are analogous to ordinary and additional maternity leave.
- if two people jointly adopt a child, one can take adoption leave and the other can take paternity leave.
- 26 weeks qualifying period for the adoption leave rights. Calculated from when the parents is matched with the child.

11.4 Working Patterns (29 public service)

Term time workers 22 i.e. off when the school is off.

Key time workers 15 e.g. 1000-1200, 1400-1600 When the organisations is particular bussy.

Job sharers 29

Early mornings 18 before 0800

Afternoons only 10

Twilight 10 after 1700

Nights 8

Rotating 2-3 days 10

Other rotating 10

11.5 Paternity adoption and maternity leave

- Two weeks paid paternity leave for birth and adopted children.
- Ordinary adoption leave of 26 weeks additional unpaid leave of 26 weeks
- Ordinary maternity leave of 26 weeks additional unpaid leave of 26 weeks.
- Notification is the 15th week before EWC notification of “matching”
- Notification of 28 days required for
 - paternity, adoption and maternity pay
 - changeing start date
 - an early return
- lower of 100 or 90% of earnings first 6 weeks of SMP remaining at 90%
- right to request flexible working.

12 Disciplinary Discrimination Act 1995

Definition:

Physical or mental impairment which has a substantial and long term adverse affect on his ability to carry out normal day to day activities.

12.1 Disability Discrimination

For a reason which relates to the disabled person's disability, he treats him less favourably than he treats or would treat others to whom that reason does not would no apply. and he cannot show that treatments in questions is justified.

12.2 Failure to make reasonable adjustments

An employer also discriminates against a disabled person if

- he fails to comply with a section duty imposed upon him in relation to the disabled person and
- he cannot show that his failure to comply with that duty is justified

Where

- a) any arrangements made by or on behalf of an employer or
- b) any physical feature of premises occupied by the employer place the disabled person concerned at a substantial disadvantages in comparison with person who are not disabled , it is the duty of the employer to take such steps as it is reasonable in all the circumstances the case for him

12.3 Redeployment

- Under the core of practice
- Where as employee becomes disabled or has a disability which deteriorates and cannot work in the same place. or work under the same arrangements and no reasonable adjustments can be made then employee should be considered for any suitable post which may become available
- reasonable training might be expected.

13 Health and Safety

95% of cases are settled out of court, since company offers the employee money instead of going ot court. They often save money this way as going to court costs a lot of money. However, if the employee still goes to court

after being offered a sum from the company, if the employee rewarded less or equal the amount by the court, the employer may be asked to pay *all* costs by *both* the employer and the employee.

13.1 General duty of care

- common law duty
- statutory duty
- to ensure so far
- provide a safe system of work, including the provision of information, training, instruction and supervision and competent employee.
- provide safe premises an/or /
- three factors are important when assessing what steps are necessary for an employer to fulfill its duty of care.
 1. the state of knowledge about the risk
 2. the magnitude of the risk
 3. the circumstances of the individual employee

13.2 Health and safety at work at 1974

prove and maintain as so far as reasonable practicable, safe plant and safe work systems.

making arrangements in so far as reasonable practicable for the use, handling in, storage and transport of articles and substances.

the employer in as far as reasonably practicable any necessary information, instruction and training.

the employer in as far as reasonably practicable a safe working environment.

13.3 Safety representatives and safety committee (SRCs) REGS 1977

- safety representatives can only be recruited from recognised unions.
- safety representatives have a number of functions
 - to investigate potential hazards
 - to examine causes of accidents
 - monitor accident statistics
 - to investigate complaints from employees
 - to make representation to the employer of any of these
 - to make representation on general matters
 - to carry out inspections
 - to represent in consultations with the HSE
 - to attend safety committee meetings
- safety reps are entitled to paid time off for training.
- 1996 where no safety representatives exist, the employer can consult with employees on REPs.
- management of health and safety regs 1992
- assessment
- employers must make suitable and sufficient assessment of the risks to the health of their employees and to non employees.
- arrangements
- employers must introduce appropriate arrangements for effective planning, organisation, control, monitoring and review of prevention and protective arrangements.
- Competent person
- Employers must appoint a competent person to assist in complying with legal requirements
- emergency procedures

- employer must establish appropriate⁴ procedures to cope with and danger
- information
- must provide confi..and to employees or risks
- belevast ...

14 EU working time directive

- Health and security driven directive.
- Maximum working week of 48 hours, including overtime.
- Not to be subject to any detriment, because they are unwilling to agree more than 48 hours.
- Maximum nightwork shift of 8 hours on average.
- Minimum daily rest period of 11 hours
- Rest break where working day is longer than 6 hours.
- Minimum rest period of one day per week.
- Minimum period of annual leave of 4 weeks.

14.1 Flexibility

“The degree of flexibility available as a result of wide ranging combinations of reference periods, derogations and exemptions (in the Directive) is substantial”

- Advocate general
- Working week can be averaged over 4 months or
- 12 months where specified in a collective agreement.

14.2 Specific derogations

Hospitals, prisons, dock or aircraft workers, press and radio, postal and communications, ambulance and fire service, gas, water, electricity, refuse collection and agriculture.

14.3 UK position

- 3.5 million employees work over 48 hours
- 3/4 million employees have less than 4 weeks leave.
- 2.4. million part timers have less than pro rate equivalent.

14.4 Opportunity for bargaining?

- To promote agreement between both sides.
- Employers can obtain derogation by agreement with recognised trade unions.
- Now an area of negotiation
- Flexibility for reduced hours.
- Flexibility for additional annual leave.
- UK employers may find themselves disadvantaged compared to EU employers

15 Surveillance

- Monitoring, recording or intruding upon email.
- Monitoring, recording or intruding upon telephone calls
- Auditing PCs C drives
- Closed circuit television
- Observation of employees

15.1 Issues for employers

- call centers
- monitor calls for customer satisfaction
- monitor to achieve quality targets
- monitor to identify training needs

- to record for dispute purposes
- monitor use of internet

15.2 Email and Internet Monitoring in the Workplace: Information Privacy and Contracting Out

From ilj vol 31 (Oliver 2002)

- why privacy: autonomy, democracy, dignity and well being. “develop their ideas before going public”.
- privacy allows employees to share intimate information, trust each other, emotional release.
- some argue no privacy in the workplace
- employers benefit from worker’s autonomy
- right to private time
- employer control could influence workers’ health
- employer gaining personal profiles of their workers by monitoring email and internet traffic.
- reasons for monitoring employees.
- Sex Discrimination Act 1975, Race Relations Act 1976, quotes Human Rights Act 1998: freedom to express and privacy.
- HRA could be applied to email and internet monitoring.
- converse is true: if the employer makes it clear that email and internet is not tolerable, it is no question.
- Data Protection Act 1998
- Investigatory Powers Act 2000. relates directly to email/internet
- Telecommunications Act Regulations 2000: hardly limits employer monitoring practices at all.
- Data Protection Act 1998, recognises the dangers of employer relations consent, uses proportionality to minimise intrusions into workers’ privacy, irrespective of contracts and workplace policies.

- international labour office: privacy is a human right. Sadly enough, a lot of work legislation does not protect this.

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