

A Legal Update

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(Member Support)**

- **Employment law issues**
- **Child protection and safeguarding issues**
- **GTC(E) and the new Teaching Agency**
- **Sources of legal advice**

The Equality Act 2010

- **Consolidation and harmonisation of previous legislation**
- **Equality & Human Rights Commission**
www.equalityhumanrights.com
***Employment Statutory Code of Practice
& non-statutory practical guidance***

Discrimination – protected characteristics

1.age

2.disability

3.gender reassignment

4.race

5.sex

6.sexual orientation

7.marriage / civil partnership

8.pregnancy & maternity

Prohibition of

- **direct discrimination**
- **indirect discrimination**
- **discrimination by association / perception**
- **third party harassment**
- **victimisation**
- **dual discrimination**

NB – vicarious liability of employer

Recruitment procedures

- **no pre-employment health questions**



except for

- **reasonable adjustments**
- **intrinsic function**
- **occupational requirement**
- **positive action**
- **monitoring diversity**

Safeguarding requirements

- **verify medical fitness after offer of employment but before employment is confirmed**
- **NB duty to make reasonable adjustments**

Disability discrimination

- **unfavourable treatment not less favourable – no comparator**
- **no longer need to have a clinically recognised condition**
- **no list of day to day activities**

Reasonable adjustments

- **changing how things are done**
- **making changes to the built environment**
- **providing auxiliary aids**

Stress

- **44% teachers have suffered stress-related illness**
- **56% teachers consider leaving the profession because of stress**

Stress at work – vital questions

- **Has employee suffered injury caused by work?**
- **Was the injury reasonably foreseeable? By employer? By employee?**
- **Was the employer in breach of duty?**

“It is clear law that an employer has a duty to provide his employee with a reasonably safe system of work and to take reasonable steps to protect him/her from risks which are reasonably foreseeable”

Walker –v- Northumberland County Council (1995)

Review

- **recruitment procedures/documents**
- **employment contracts**
- **equal opportunities policy**
- **dignity at work policy**
- **staff training**

What happened to retirement?

- **1st October 2011 – default retirement age abolished**
- **ACAS code of practice**
- **Employer Justified Retirement Age policies**
- **“proportionate means of achieving a legitimate aim” – fraught with risks**

What will happen?

- **resignation**
- **fair dismissal**
 - a. **conduct**
 - b. **capability/qualifications**
 - c. **redundancy**
 - d. **statutory restriction**
 - e. **some other substantial reason (SOSR)**

Automatically unfair dismissal if someone

- **exercises statutory rights, such as the right to written particulars of terms and conditions**
- **is pregnant**
- **takes/asks to take statutory maternity, paternity or adoption leave**
- **is or intends to be a trade union member, or refuses to join a union**
- **exercises rights under the National Minimum Wage Act**

- **complains about a health and safety problem**
- **reports wrongdoing at work ('whistleblowing')**
- **exercises rights in connection with a statutory grievance or disciplinary procedure**
- **takes part in official industrial action that lasts less than 12 weeks**
- **takes time off for jury service**
- **asks to work flexibly if he/she has a right to do so**
- **exercises rights under the Working Time Regulations**

Constructive dismissal happens when an employee is forced to quit their job against their will because of their employer's conduct – employee must resign first

Unfair dismissal is where the employer sacks an employee (or forces him/her to leave) without good reason or fails to follow proper procedures.

Wrongful dismissal is when the employer breaches the contract in sacking the employee (or forcing him/her to leave).

Unfair dismissal qualifying period

- **from 6 April 2012 proposal to increase to 2 years**
- **with measures to**
 - **encourage the early resolution of disputes**
 - **speed up the tribunal process**
 - **tackle weak and vexatious claims**
 - **introduce fees for bringing tribunal claims**
 - **consult on removing Equality Act provisions imposing liability on employers for third party harassment which they do not take reasonable steps to prevent**

Tribunals

- **Focus on justification not re-hearing**
- **Burchell test**
 - **genuine belief in guilt**
 - **reasonable investigation**
 - **reasonable range of sanctions**
- **test is the reasonableness of the employer's reaction not the injustice to the employee**

Tribunal awards April 2010- March 2011

	Maximum	Median	Average
Unfair Dismissal	£181,754	£4,591	£8,924
Race	£62,530	£6,277	£12,108
Sex	£289,167	£6,078	£13,911
Disability	£181,083	£6,142	£14,137
Religious	£20,221	£6,892	£8,515
Sexual Orientation	£47,633	£5,500	£11,671
Age	£144,100	£12,697	£30,289

Review

- **assumptions**
- **workforce planning**
- **expectations of younger staff**
- **contracts and handbooks**
- **appraisal / performance management**
- **recruitment policy**
- **disability matters**
- **dignity at work policy**
- **staff training**

Family friendly matters

- **Extensions to paternity leave April 2011**
- **Flexible working (www.direct.gov.uk & www.bis.gov.uk & www.businesslink.gov.uk & www.acas.org.uk)**
 - **No right to work flexibly**
 - **Right to request flexible working hours / place of work**
 - **After 26 weeks continuous employment**
 - **If it is to enable the employee to care for another**
 - **Child under 16 (disabled under 18)**
 - **Adult (partner, relative, same address)**
 - **Employer must consider such a request**
 - **Decision in writing with 14 days – forms can be downloaded**
- **Similar rules for training requests**

Review

- **handbooks**
- **policies**
- **procedures**
- **managers' briefings**

Discipline & dismissal

dismissal can be fair

- a. conduct
- b. capability/qualifications
- c. redundancy
- d. statutory restriction
- e. some other substantial reason (SOSR)

Legal representation at internal disciplinary hearings

- **R – v – Governors of X School**
- **Supreme Court overturned Court of Appeal decision**
- **no entitlement to legal representation at hearings even if dismissal suggests barring from the profession - ISA makes its own judgements**

Grievances and disputes

- **ACAS code of practice**
- **settle matters in workplace**
- **new importance of mediation**

Child protection and safeguarding

- **previous government**
 - **legislation**
 - **documentation**
 - **procedures**
 - **training**
- **all about compliance and inspection**

A change of approach

- **Sir Roger Singleton 2009**
Drawing the line
- **Prof Eileen Munro 10th May 2011**
A child-centred system
- **“a concern for protecting oneself or one’s agency has competed with, and sometimes over-ridden, a concern with protecting children”**

- **new emphasis**
 - **outcomes not outputs**
 - **greater professional autonomy**
 - **simplification**

- **but duties remain**
 - **be safe**
 - **teach safety**
 - **share concerns**
 - **training for all**

- **ISA & CRB and the Protection of Freedoms Bill**
 - **10th October 2011 – report stage in House of Commons**
 - **Royal Assent by late 2011**
 - **in force by early 2012?**

Part 5 Protection of Freedoms Bill

Amendments to vetting & barring

- **ISA & CRB to merge**
- **registration scrapped**
- **regulated activity redefined**
- **CRB process updated and fairer**
- **no longer covers supervised volunteers**
- **will cover 16/17 year old (House of Commons amendment at 2nd reading)**

Definition of regulated activity

Involves contact with children or vulnerable adult

of a specified nature	“frequently, intensively and/or overnight”
or	
in a specified place	

or
is a specified role
No distinction made between paid & voluntary work

Frequent, intensive, overnight

- **4 times or more in a rolling period of 30 days**
- **Any time between 2am and 6am with opportunity for face to face contact**

CRB changes

- **Portability & continuous updating (initial then annual fees)**
- **Police relevance test ('might be relevant' to 'reasonably believes to be relevant')**
- **Sent to individual only (?risk of fraud?) (how long to supply?)**
- **Right of review by different police force**
- **Ineligible applications penalty**

So...

- Revert to 'Safeguarding children & safer recruitment 2007'
- Legal duty to refer – ISA referral guidance 2007
- ISA vetting & barring scheme guidance 2010
- Wait for new guidance

**It's as you were for the time being
and
get ready to review procedures**

GTC(E) and the Teaching Agency

- **GTC(E) stops operating 31st March 2012**
- **responsibility for teacher regulation passes to Secretary of State**
- **day to day functions carried out by the Teaching Agency**
- **TA includes all schools, children's homes etc.**
- **until next year, referrals, hearings etc. as at present**

The Teaching Agency intended to be responsible for

- **holding a database of qualified teachers, available to employers from April 2012**
- **managing a list of prohibited teachers**
- **supply & retention of workforce**
- **quality of workforce**
- **teacher regulation**
- **hearing cases of professional misconduct**

Sources of legal advice

- **for schools/colleges/governors/employers**
 - **LA**
 - **HR provider**
 - **bought-in services**
 - **retained legal firm**
- **for ASCL members re personal employment issues**
 - **ASCL via hotline**
 - **(employer's legal advisers – in some circumstances)**

**Always take advice sooner
rather than later...**

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