

CHANCERY MANAGEMENT NEWS UPDATE

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Seasons Greetings

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On This Day In Previous Years

1653 An athlete from Croydon is reported to have run 20 miles from St. Albans to London in less than 90 minutes.

1906 Cinema Omina Pathe the world's first cinema opens in Paris.

1939 The world's premiere of Gone With the Wind was shown in New York.

1941 The Japanese emperor Hirohito signs declaration of war.

1955 Rosa Parkes was arrested in Alabama for refusing to give up her seat on a bus for a white man.

1966 Britain issued its first special edition of Christmas stamps.

The Agency Workers Directive Deferred Until 1 October 2011

On 15 October 2009 the Government announced plans to defer several employment regulations including employment rights for agency workers, the right to request workplace training and time off entitlement. The revised timing is only two months prior to the mandatory date that the legislation must be introduced in the UK.

Once the Directive is introduced in the UK, temporary agency workers will be entitled to equal treatment with permanent employees after twelve weeks in a particular job. This will apply to the basic terms and conditions, including the duration of working time, overtime, breaks/rest time, night work, holidays and bank and public holidays and pay as if they were recruited directly by the employer.

The Government was also proposing to introduce a Directive from April 2010 allowing an employee to request time off for training during working hours. This entitlement will now only apply to an employer with 250 employees or more. Smaller employers will not be expected to comply until April 2011.

Holiday And Sickness

The European Court of Justice (ECJ) has ruled that when an employee is sick during a period of

annual leave the employee has the right to defer the holiday to a later date.

If an employee is on sick leave prior to annual leave and is still on sick leave during holiday leave it is easier to prove compared with an employee becoming unwell during the actual leave.

However the ECJ has ruled that if an employee becomes ill during their leave period they are entitled to take the time as sick leave by deferring their annual leave.

The Directive has been implemented into UK law under the provisions of the Working Time Regulations 1998 (WTR). The Regulations state that workers in the UK are entitled to defer any holiday leave whilst they are unwell as that time may be taken as sick leave instead of holiday.

This ruling applies to all holiday leave, not just the minimum statutory holiday and includes bank/public holidays.

It is prudent to state in the terms and conditions of employment that employees who become ill whilst on holiday whether in the UK or overseas are required without exception to produce a medical certificate.

The terms and conditions should also state that any sickness must be reported at the start of the working day as would be the case if the employee became sick during normal working time.

PAYE In The Construction Industry

HM Revenue & Customs (HMRC) have been interested in the whole of the construction industry for over 38 years when several cases of irregularity were discovered in the early seventies.

HMRC consider the industry to be riddled with undeclared income including cash payments. Although the Government introduced the Construction Industry Scheme (CIS) in 2007 which made irregularity more difficult, HMRC still believes irregularity is rife because there have been several hundred thousand contractors tax returns received by HMRC that have no claims for materials, plant or equipment which is very suspicious.

Although changes in legislation have improved the situation from time to time there has not been sustained improvement. Therefore the Government and HMRC have concluded that compliance work to date has failed to solve the problem.

The proposed solution is to introduce legislation to make it compulsory for any engager in the construction industry using the services of a worker to undertake construction work to consider the work to be employment and to deduct PAYE tax and National Insurance.

The term engager is subject to the same rule as applied to the CIS scheme and therefore it will not apply to individual home owners commissioning building work to their homes.

News From The City

The Organisation for Economic Co-operation and Development (OECD) warned that Britain is at growing risk of a *public debt spiral* unless drastic action is taken to cut the deficit.

Official figures show that public borrowing widened to £11.4bn in October. That is £4bn more than the City forecasts had anticipated and a record for the month.

It is an embarrassment for the Government that has pledged to halve the deficit in four years and to reduce debt every year for the coming decade. The OECD predicted the deficit could be even higher next year.

The price of gold continued to increase amid evidence that even formerly sceptical investors are investing in gold funds.

The Royal Mint has increased its production of gold coins.

HSBC in New York requested their retail customers to remove their bullion from its vaults to make room for institutional clients.

The Japanese finance minister warned that the economy is again suffering from deflation and spoke of a sense of crisis.

In the UK in a shock ruling the Supreme Court found in favour of Britain's high street banks in a case brought by the Office of Fair Trading (OFT) over the unfairness of overdraft charges.

A million people who have already filed legal claims for refunds are likely to have their claims dismissed.

Lloyds Banking Group raised £8.5bn from new debt, most of it from contingent-convertible bonds (CoCos). It now plans a £13.5bn rights issue.

Borders, the high street book retailer, was reported to be hours from administration unless a rescue deal is concluded.

Additional Paternity Leave And Pay

The additional paternity leave and pay will be effective on or after 3 April 2011. Similar arrangements will also apply to child adoption.

From 6 April 2010 employees will be able to take Additional Paternity Leave which they may want, if, for example, there is a premature birth or some other urgent reason.

The proposals state that families will have the choice to transfer up to six months additional paternity leave (APL) to the mother's spouse or partner, which can be taken once the mother has returned to work.

This facility will be available during the second six months of the child's life, allowing parents to divide a period of paid leave between them.

If leave is taken during the mother's thirty nine week maternity pay period the rate paid will be the same as Statutory Maternity Pay, currently at a rate of £123.06 per week for 2009-2010.

An employee can take up to twenty six weeks for additional paternity leave but under current proposals will probably only be paid for a period of thirteen weeks.

The Default Retirement Age

The Default Retirement Age (DRA) regulations were first introduced on 1 October 2006 which gave the employee the statutory right to request to continue working after the age of 65 but the regulations also gave the employer the right to refuse the employee to continue to work.

Age Concern challenged the DRA through its Heyday association as soon as it was released, on the basis that that the UK legislation did not interpret the equal treatment correctly.

The High Court then asked the European Court of Justice (ECJ) whether the Directive required member states to specify the kinds of treatment which might be justified. The ECJ stated that the Directive does not require a specific list to be drawn up.

In March 2009 the ECJ ruled that the default retirement age was legal under EU law as it could be justified as being a proportionate way of achieving a legitimate aim and left it to the High Court to decide whether the default retirement age was correct in principle.

On 25 September Mr Justice Baker ruled in the High Court that the proposed default retirement age in the UK of 65 was lawful.

According to the Office of National Statistics (ONS) the number of people working that are over the state pension age (currently 60 for women and 65 for men) has substantially increased to 1.4 million.

According to recent articles in the media, about 250,000 people who did not want to retire at 65 had their tribunal cases placed on hold pending the High Court ruling. Under the circumstances these claims are now likely to be struck out.

According to Age Concern their research showed that 60% of people aged over 50 years believe they will have to work longer than they planned because of the state of the economy.

Although the default retirement age will continue to be an option for employers, some employees may find that it is not their decision whether they work after retirement.

Age Concern also found that nine out of ten people aged over 50 years that took part in the survey believed that people should have the right to continue to work after age 65 if they wished providing they could still do their job.

Age Concern's findings were backed up by a report issued by Standard Life which stated that 85% of the population do not intend to stop work altogether when they reach retirement age.

Most employers like the default retirement age as it allows them the flexibility to plan their staff levels and keep experienced people for longer.

The Government has announced that it will conduct a review of the default retirement age of 65 in 2010.

According to reports in the media the Prime Minister appeared to endorse the removal of the default retirement age. He said: Evidence suggests that allowing older people to continue working, unfettered by negative views of ageing, could be a big factor in the success of Britain's business and our future economic growth.

George Osborne the Shadow Chancellor outlined plans at the Conservative Party Conference in October to bring forward the date of increasing the pension age for men to 66 years by 2016.

Statistics of the Month

Exposure to asbestos kills about 4,000 Britons every year; more than the number that die in traffic accidents. Source: The Independent on Sunday.

The average size of an Iranian family has fallen from 7 to 1.9 children since 1979.
Source: The Times

Quotations of the Month

Borrow money from pessimists, they do not expect it back.

Information is like an oyster. It has its greatest value when it is fresh.

Think of all the beauty around you and be happy.

Every moment is one moment less.

A positive attitude may not solve all your problems, but it will annoy enough people to make it worth the effort.

The man who knows most is the first to want to know more.

If it is to be, it is up to me.

We make a living by what we get but we make a life by what we give.

Source: The CML Collection.

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