

CHANGES TO SEX DISCRIMINATION ACT

April 2008



Introduction

Recent case law highlighted gaps in the current Sex Discrimination legislation and, as a result of this, the Government has made amendments which will be implemented this month (6 April 2008) in the form of the Sex Discrimination Act 1975 (Amendment) Regulations 2008.

There are 4 amendments to the current Sex Discrimination Act 1975, outlined below.

Definition of Discrimination

An employee who is subjected to less favourable treatment on the grounds of her being pregnant or on maternity leave is no longer required to find a comparator (i.e. another employee who is not being treated discriminately) in order to bring a claim. Now the employee needs to only show that she has been made subject to less favourable behaviour.

Harassment

The definition of harassment has been widened in the context of sex discrimination, in order to encompass unwanted conduct related to either his or her sex, or the sex of another person. Now an employee who is not directly subject to harassment, but has been affected by the ripple effect of such discrimination, will also be able to bring a claim against their employer. An example of this may be where a discriminatory act directed at one employee, subsequently creates an intimidating atmosphere for all other employees within the immediate vicinity.

Protecting Employees from 3rd Parties

Employers are now under an obligation to take reasonably practicable steps to protect their employees from harassment by third parties. An employee who is subject to harassment by a third party (not the employer or another employee) will be able to bring a claim against their employer, subject to the employer having failed to take reasonable steps to prevent the third party from committing the act of harassment, and also, subject to the individual being the subject of two previous incidents of harassment. Third parties may include contractors who are hired by the employer, entertainers at office parties or even clients.

Rights of Woman on Maternity Leave

At present, UK law serves to preserve more employee benefits (other than remuneration) whilst the employee is on Ordinary Maternity Leave (OML) than whilst the employee is on Additional Maternity Leave (AML). For those employees whose Expected Week of Childbirth (EWC) starts on or after 5 October 2008, there will be no distinction between the two types of leave for the purposes of a claim for pregnancy or maternity discrimination. The amendments have narrowed the extent to which an employee can be deprived of benefiting from her terms and conditions during maternity leave. An employee on maternity leave may also bring a claim for discrimination in relation to eligibility of bonuses while on compulsory maternity leave.

MORE CHANGES FROM APRIL 2008

Consultation Extended to 50+ Employees

From 6 April 2008, employees have the right to request employers with more than 50 employees to set up arrangements to consult and inform employees about various organisational issues.

Changes in Statutory Employee Benefits

Statutory Sick Pay (SSP)

- The weekly rate of SSP is £75.40

Statutory Maternity Pay (SMP)

- First six weeks – 90% of employee's average weekly earnings
- Remaining weeks – Pay the **lower** of either 90% of the average earnings, or £117.18 per week.

Statutory Paternity Pay (SPP)

- SPP is paid for a maximum of 2 weeks to employees who satisfy qualifying conditions
- The weekly rate is the **lesser** of £117.18 or 90% of employee's average weekly earnings.

Can We Help?

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