

UPDATE JANUARY/FEBRUARY 2004

Are compulsory shirt and ties discriminatory?

In April 2003, you may well have noticed in the news the case of *Thompson v Department for Works and Pensions*, in which Mr Matthew Thompson, an administrative assistant at the Stockport Jobcentre Plus, brought a sex discrimination case on the basis that it was unfair he had to dress formally at work, when women did not. The Employment Tribunal held that Mr Thompson had been treated less favourably on the ground of his sex by being required to wear a collar and tie at work. In the Tribunal's view, women had a greater choice of dress than men, since they were not required to wear any specific item of clothing. By requiring men to wear ties, the employer had been imposing a higher level of smartness on men.

As a result of this decision, some 6,950 other male job centre workers lodged similar complaints. However, the Department for Works and Pensions appealed to the Employment Appeal Tribunal.

The EAT held that the Tribunal should have asked whether, applying contemporary standards of conventional dress, the level of smartness which Jobcentre Plus required of all its staff could only be achieved by men if they wear a collar and tie. If an appropriate level of smartness for men could be achieved by men dressing otherwise than in a collar and tie, then the dress code would suggest that men are being treated less favourably than women, because the Jobcentre Plus did not need to restrict men's choice to only a collar and tie. The Tribunal had not made any findings that specifically determined this correct question and therefore, the EAT held that the case would have to be remitted to a different tribunal for examination of that issue.

Consultation on working time

The European Commission has announced that it is to undertake a consultation exercise on how the EC Working Time Directive should be revised in the future, particularly focusing on the issue of the '*opt-out*', which allows individuals to waive their rights under the Directive, and on the definition and calculation of working time.

The Working Time Directive is of course the Directive, which required the UK government to implement the Working Time Regulations 1998. The said '*opt-out*' is contained at regulation 5 of the Working Time Regulations 1998, and employers in

England frequently use this regulation to ask their employees to 'opt-out' of the limit on a 48 hour working week.

The Commission's report found that not all the guarantees laid down in the Directive are being effectively met, including that workers are frequently asked to sign an 'opt-out' agreement at the same time as signing their employment contract, which is not recognising the importance of individuals' freedom of choice about how they work.

The consultation asks for a response on five main issues, which include:

- (a) the extension of the reference period for calculating average weekly working time from the current four months to six months or a year;
- (b) the definition of working time following recent European Court of Justice rulings on time spent on call; and
- (c) the conditions for the application of the opt-out.

The deadline for responses to the consultation is 31 March 2004 and the consultation paper can be found at:

http://www.europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.getfile=gf&doc=MEMO/04/110|RAPID&lg=EN&type=PDF

Proposals to limit conciliation periods in Tribunal claims

The DTI has issued detailed proposals for fixing the periods during which ACAS has a duty to conciliate in most employment tribunal cases. The proposals derive from provisions in the Employment Act 2002, establishing a fixed period of conciliation.

The DTI's proposals, contained in draft regulations, provide for two defined periods:

- (a) *a 'short conciliation period' of seven weeks*: for claims relating to unauthorised deductions of wages (including holiday pay), breach of contract, statutory redundancy payments, unpaid guarantee pay and unpaid medical suspension pay, unless of unusual complexity; and
- (b) *a 'standard conciliation period' of 13 weeks*: for other claims.

Under the draft regulations, the discrimination and equal pay jurisdictions are to be excluded from the fixed period for conciliation.

These reforms are designed to save money in the administration of the employment tribunal's service, and parties will be encouraged to make conciliation a priority at the outset.

Acas has published a consultation document explaining why it will only be able to conciliate outside the fixed period in exceptional circumstances and the deadline for comments on this paper is 5 March 2004.

The DTI's consultation paper can be found at:
http://www.dti.gov.uk/er/individual/etregs_condoc.pdf

ACAS' consultation paper can be found at: <http://www.acas.org.uk/fixperiod.html>

Draft new Employment Tribunal Rules of Procedure

The DTI has issued a major consultation on a draft revision of the procedures in Employment Tribunals, with the aim of making the tribunal system run more smoothly.

Key reforms proposed include:

- (a) Tighter control over the circumstances in which extensions of time will be granted to respondents for submitting a response form (i.e. a notice of appearance).
- (b) New pre-acceptance procedures to 'sift-out' claims and responses that for one of a specified number of reasons should not go forward.
- (c) Changes to the present costs rules to make provision for awards of costs in respect of preparation time in some circumstances and to make it possible for representatives (except not-for-profit representatives) to incur a costs award on account of their own conduct.

Following the public consultation, the Government intends that the revised Regulations will be laid before Parliament in Spring 2004 and come into force on 1 October 2004.

Increase of Limits in the Tribunal

The new compensation limits for claims in the employment tribunal have been published. Most importantly, from 1 February 2004, the following limits will apply:

The limit on a week's pay will rise to £270, from £260: This is used, for example, for the purpose of calculating basic or additional awards of compensation for unfair dismissal or redundancy payments.

The limit on the amount of compensatory award for unfair dismissal will rise to £55,000 from £53,500.

Please note that these limits apply where the event giving rise to the entitlement to compensation or other payments occurred on or after 1 February 2004. Therefore, if an unfair dismissal occurred on 1 September 2003, the limit of £53,500 still applies, even if the case is decided at a Tribunal after 1 February 2004.

Remember of course that there is no limit on the awards which can be made in sex, race and disability discrimination claims.

This newsletter is issued for general guidance only. Please contact us for advice before taking action.