

A glance back and a quick look ahead

Of the changes mentioned in my previous note, some are already in place and perhaps the most significant of those are the changes to whistleblowing legislation that came into effect on 25 June 2013.

The Enterprise and Regulatory Reform Act 2013 (“ERRA 2013”) has introduced a new “public interest” test for qualifying disclosures and at the same time has removed the requirement that a disclosure must be made in good faith. There is, however, a new power for Employment Tribunals to reduce compensation by up to 25% if a protected disclosure has not been made in good faith. ERRA 2013 has also introduced vicarious liability of the employer for detriment caused to a whistleblower by another worker.

There may be further changes to whistleblowing legislation on the horizon too. The Whistleblowing Commission’s public consultation on the law relating to whistleblowing in the workplace has just closed. The consultation document posed questions and made proposals on how to improve the law to ensure greater protection for those who blow the whistle. Proposals included making whistleblowing policies mandatory, introducing rewards, extending protection to a wider category of workers and an exemption from Tribunal fees for whistleblowing claims. Watch this space!

Next up are the new Employment Tribunals Rules of Procedure and the introduction of fees in the Employment Tribunal and Employment Appeal Tribunal, both of which come into effect on 29 July 2013.

The new rules were published on 3 June 2013 as schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. Amongst other things, there will be an initial sift of claims, by an Employment Judge, once a response has been accepted and greater case management powers for Employment Judges and Tribunals.

ACAS offers a pre-claim conciliation service to assist in resolving a workplace dispute before Tribunal proceedings are commenced and this is due to become mandatory for most types of claims, but not until April 2014.

As to fees in the Tribunal, a Claimant will be required to pay two fees – an issue fee on submitting the claim and a hearing fee around 4 to 6 weeks before the full hearing. Judges will have the power to order the unsuccessful party to reimburse any fees paid by the successful party, although this will be at the Judge’s discretion and not automatic.

Please contact me for more information on any of the subjects covered in this bulletin or on any other employment law issue that might affect you or your business.

3 July 2013