



## World Cup and Employee absence

The World Cup is due to start on the 11<sup>th</sup> June 2010 and many employers are concerned that enthusiasm for the tournament could have an affect on employees' attendance or productivity. CIPD has produced some useful guidance for employers on how to get the best outcome. This can be found at: [http://www.cipd.co.uk/subjects/hrpract/absence/world\\_cup\\_absence\\_management](http://www.cipd.co.uk/subjects/hrpract/absence/world_cup_absence_management)

## The Coalition Government - Employment Law Agenda

Before the election each of the main parties set out their views on a number of employment related issues. However, as the Conservatives and Liberal Democrats have now formed a coalition government, it is not clear which of the two possibly competing stances is likely to prevail or, how much a party's standpoint on particular issues may be weakened in the inevitable process of give and take.

The parties produced their initial agreement '*The Coalition: our programme for government*' on the 20<sup>th</sup> May 2010. In the section dealing with Business the stated aim is to "review employment and workplace laws, for employers and employees, to ensure they maximise flexibility for both parties while protecting fairness and providing the competitive environment required for business to thrive". What this will mean is unclear at this stage but some guidance can be gleaned from the coalition programme and from the parties' respective manifestos. Some key issues include:

- **Work and families** - The programme states that the government will "encourage shared parenting from the earliest stages of pregnancy". Prior to the election the Liberal Democrats stated that they would allow parents to share maternity and paternity leave between them after the first two weeks and would seek to extend leave for up to 18 months "when resources and economic circumstances allow". They also proposed giving fathers the right to time off to attend antenatal appointments. The Conservatives proposed a new flexible parental leave though mothers would still be the only ones entitled to the leave for the first 14 weeks.
- **Flexible working** - The government plans to extend the right to request flexible working to all employees. Whether this will be phased or immediate is not yet clear.
- **Default retirement age** - The programme states that it will phase out the default retirement age though no timing has been given.
- **Equality** - The government intends to "promote equal pay and take a range of measures to end discrimination in the workplace". A key issue over the next few months will be what effect the change in government will have on the implementation of the Equality Act 2010. The Conservatives have previously indicated that they would review some aspects of the Act and possibly make some changes.
- **Equal pay audits** - Compulsory equal pay audits were not welcomed by the Conservatives though they did propose imposing them on employers who had been found to have discriminated on the basis of gender. The Liberal Democrats proposed them for all employers with over 100 employees.



## CASE STUDY - London Borough of Redbridge v Baynes

### Background

The Claimant, Mrs Baynes, lost the sight in one eye but was certified as 100% fit for duties by the eye hospital. After this, her manager referred to her 'disability' and changed her duties. Mrs Baynes believed that the change in her duties was a detriment and resigned. She then issued claims for constructive dismissal and disability discrimination. Her case was that it was the perception of the line manger that was the cause of the discrimination not the fact that she was disabled.

Her claims were submitted after the usual time limit for presenting them had expired and so a pre-hearing review (PHR) was held to consider if an extension of time should be allowed and whether she was disabled. Neither Mrs Baynes nor her employer produced any medical evidence at the PHR.

### Decision

The Employment Tribunal that dealt with the PHR concluded that she had a physical impairment which had a substantial and long-term adverse effect on her ability to carry our normal day-to-day activities and was disabled for the purposes of the Disability Discrimination Act. This was despite Mrs Baynes' clear statement that she was not disabled. As such it was just and equitable to extend the time for submitting her claims.

The Employer appealed this decision to the Employment Appeal Tribunal. They found that the decision that she was disabled was not one that the Employment Tribunal should have made without further evidence. They also concluded that Mrs Baynes' concession that she was not disabled was an informed one and she should not be allowed to withdraw it. Therefore the extension of time was refused and her claims were dismissed.

### Comment

Mrs Baynes' claims were dismissed for having been submitted out of time. In any event, under the Disability Discrimination Act there is no remedy for an employee who is treated less favourably because she is perceived as disabled but in fact is not. This is set to change when the Equality Act 2010 comes into force. Under this Act where an employee is perceived as disabled and treated less favourably because of the 'protected characteristic' - disability- they will be protected even though they are not disabled.

## CORPORATE LAW BULLETIN

### Do We Need a Shareholders' Agreement?

This is a question that we are regularly asked in the Corporate Department. The answer will depend upon the particular circumstances. For example, it will often be appropriate to have a shareholders' agreement where there are minority shareholders or outside investors such as venture capitalists or business angels. In addition, it may be desirable to have one in the case of 50/50 joint venture companies, which are inherently deadlocked.

The following matters are commonly covered in shareholders' agreements:

- The procedure to be followed if a shareholder wishes to sell his shares.
- What will happen if a shareholder dies.
- What will happen if a shareholder ceases to be a director or employee of the company.
- Provisions enabling a certain majority of the shareholders to force the minority to accept a take-over offer.
- Matters requiring the consent of all shareholders.
- Provisions regulating the management of the company.
- Payment of dividends.
- Restrictive covenants preventing competition with the company.
- For 50/50 joint venture companies, a deadlock resolution procedure.

If you have any queries on the above or company/commercial matters generally please contact Janet Humphries on 01562 820575 or email [jhumphries@thursfields.co.uk](mailto:jhumphries@thursfields.co.uk)

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