

Legislation & Future Developments	Action Points
<p>Statutory Payments – the draft Social Security Benefits Up-rating Order 2009 has been published containing the revised weekly rates for statutory sick pay (SSP), statutory maternity pay (SMP), statutory paternity pay (SPP) and statutory adoption pay (SAP) for 2009-2010. The Order provides that:</p> <ul style="list-style-type: none"> the weekly rate of SSP will increase to £79.15 (from £75.40) with effect from 6 April 2009; and the weekly rate for SMP, SPP and SAP will increase to £123.06 (from £117.18) with effect from 5 April 2009. 	<p>Review and update current policies and procedures to ensure that the new rates are implemented.</p>
<p>Annual Leave – the second stage of the Working Time (Amendment) Regulations 2007 will come into effect from 1 April 2009. The regulations will amend the Working Time Regulations 1998 to increase the statutory annual holiday entitlement to 5.6 weeks. Full-time employees who work five days per week will therefore be entitled to a minimum statutory annual leave entitlement of 28 days per annum.</p>	<p>Review and update current policies, procedures and contracts to ensure that the new entitlement is implemented.</p>
New Law	Action Points
<p>Age Discrimination – The European Court of Justice has ruled that the compulsory retirement age of 65 contained within the Employment Equality (Age) Regulations 2006 is not necessarily unlawful in that it is capable of justification, for instance, on the basis that retiring older employees allows for younger employees to be recruited so as to create a balanced workplace. However, it is for the English courts to determine whether that test has been met. <i>Age Concern England v Secretary of State of Business Enterprise and Regulatory Reform C-388/07</i></p>	<p>Watch out for future updates as the case has been referred back to the High Court to determine whether the compulsory retirement age of 65 is, in fact, justified as having a legitimate aim.</p>
<p>Religious Discrimination – the Employment Appeal Tribunal (EAT) upheld a Tribunal’s decision that dismissal of an employee for promoting his religious beliefs to service users was not religious discrimination. The employee was a social worker and the employer had a specific policy which prohibited the overt promotion by social workers of any religious beliefs they held. The EAT upheld the Tribunal’s finding that the employee had been dismissed for promoting his religious views on others. The reason for dismissal had not been the employee’s religion itself. <i>Chondol v Liverpool City Council [UKEAT/0298/08</i></p>	<p>Care should be taken when dealing with matters which may give rise to a claim of religious discrimination</p>

Equal Pay – the EAT upheld a Tribunal’s decision that a difference in pay between predominantly male groups of employees (street cleaners and gardeners) and a “rated as equivalent” predominately female group of employees (carers) was not sex discrimination and therefore did not require objective justification. The Tribunal had found that the pay difference was due to a genuine productivity bonus which was paid to the male groups, but which would have been inappropriate for the female groups due to the nature of their work.
Gibson and others v Sheffield County Council
UKEAT/0303/08

Ensure that bonus and incentive schemes are not discriminatory or can be objectively justified.
Conduct regular reviews of such schemes.

Transfer of Undertakings – the EAT upheld a Tribunal’s decision that no service provision change, and therefore no relevant transfer, had occurred for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE 2006) when a contract was re-assigned from one contractor to a number of contractors. It was not possible to determine to which new contractor the work previously carried out by the employees had been transferred because the services carried out were so fragmented after the transfer.
Clearsprings Management Ltd v (1) Ankers and others (2) Angel Services UK Ltd and others
UKEAT/0054/08.

There were a number of distinguishable features in this case, and so the principle established in previous case law, that TUPE 2006 may still apply where activities are divided up and awarded to a number of different contractors, should not be overlooked.

Race Discrimination – the EAT held that an employer’s practice of never accepting applications for training contracts from non-EEA nationals who required work permits was indirectly discriminatory on the grounds of race. The employer argued that work permits were unlikely to be obtained in relation to these applicants and sought to rely on UK Border Agency guidance that employers had to show that the posts could not be filled by resident EEA workers in order to obtain work permits. The employer also advanced an argument based on considerable administrative costs involved in making work permit applications which they believed were destined to be unsuccessful. The EAT rejected these arguments and referred to the Code of Practice on Racial Equality in Employment which makes it clear that, so far as possible, selection should be based on merit, with work permit issues only being considered at the last stages of selection.
Osborne Clarke Services v Purohit *UKEAT/0305/08*

Review policies and procedures to ensure that recruitment processes are not directly or indirectly discriminatory. Note that the work permit regime was replaced on 27 November 2008 by the Tier 2 skilled worker category. Further information can be found on the UK Border Agency website:
www.ukba.homeoffice.gov.uk