

Employment Bulletin



Tamara Ludlow
Senior Employment Lawyer

Welcome to the November 2009 edition of our Employment E-news Update.

If the Employment Team can assist you with any employment issue then please do not hesitate to contact us.

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Contact

For further information, please visit our web site:

www.morton-fraser.com

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- [Peopletalk Bulletin](#)
- [Employment Bulletin \[PDF\]](#)
- [Employment Factcard \[PDF\]](#)

Essential Employment Law - Equality Bill - Free Seminars

Morton Fraser are running a series of seminars discussing The Equality Bill in their Edinburgh, Glasgow and London offices throughout November. The Equality Bill, due to come into force next year, is a major overhaul of discrimination legislation in the UK. It is therefore essential that employers are up to speed with the changes that will be brought in. This seminar will highlight the key implications of the Bill and provide employers with practical advice regarding the steps they will be required to take to ensure compliance.

The seminars are taking place in:

- Glasgow 12 November 2009 at 8:30am
- London 18 November 2009 at 5:15pm
- Edinburgh 24 November 2009 at 5:15pm

If you would like to attend any of these seminars please contact Elizabeth Wood on elizabeth.wood@morton-fraser.com or 0131 247 1269.

Employment Tribunal Statistics 2008/09

As reported briefly last month the most recently published statistics from the Tribunal Service covers the period from April 2008 to March 2009

www.tribunals.gov.uk/Tribunals/Documents/Publications/ET_EAT_Stats_0809FINAL.pdf

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These statistics reveal that the number of registered applications fell to 151,028 (2007/2008: 189,303). This represents a decrease of 20% over the previous year but still 14% higher than 2006/2007.

The number of sex discrimination cases which had almost doubled from 2005/2006 to 2007/2008 showed a substantial fall of 30% from 26,907 to 18,637. The number of cases brought under the auspices of the Working Time Directive which had also shown a dramatic rise to 55,712 in 2007/2008, more than halved to 23,976.

The prohibition on discrimination on the grounds of age came into force in October 2006. Looking at the number of claims since then, they show that such claims leapt from 972 in 2006/07 to 2,949 in 2007/08 and have now risen to 3,801 in 2008/2009. A steady increase in claims regarding discrimination on the grounds of religion or philosophical belief has also been seen.

The average award for unfair dismissal was £7,959 which was a slight fall on the previous year. The median award was £4,269, a 5% rise on the 2007/2008 figure.

The average award for race discrimination was £32,115 which is more than double last year's figure. The median award was £5,172, representing a 36% decrease on the 2007/2008 figure. The highest award for race discrimination was £1,353,432.

The average award for sex discrimination cases was £11,025 which is similar to last year's figure. The median award was £7,000, a slight rise on the 2007/2008 figure. The highest award for sex discrimination was £113,106.

The average award for disability discrimination was £27,235 which is a rise on the previous year. The median award was £7,226, which is a slight fall on the 2007/2008 figure. The highest award for disability discrimination was £388,612.

The average award for age discrimination was £8,869 and the median award was £3,000, both showing an increase on 2007/2008 figures. The highest award for age discrimination was £90,031.

One of the main disadvantages for employers is that even if they successfully defend any claim, it is highly unlikely that the Claimant will be required to meet the successful employer's costs. This is borne out by the statistics which show that only 265 cost awards were made in favour of Respondents (with a median award of only £1,100) which is in less than 0.01% of the total number of cases raised.

Driving At Work

It is now almost 18 months since the Corporate Manslaughter and Corporate Homicide Act 2007 came into force. The Act makes gross breaches of certain duties of care a criminal offence that will attract fines at a higher level than employers could expect under earlier health and safety laws. Significantly the term "duty of care" for the purposes of the Act includes employees' use of motor vehicles.

The Act does not introduce new regulations in respect of use of vehicles, but if employers fail to meet their duties under general health and safety law then they may be increasing the risk of prosecution for this more serious offence. Employers are therefore advised to take steps to ensure that any vehicles used for work purposes, whether they be company vehicles or employees' own vehicles, comply with The Health & Safety Executive guidance document "Driving at Work". This can be found at:

<http://www.hse.gov.uk/pubns/indg382.pdf>

Increase In Injury To Feelings In Discrimination Cases

Until the EAT's decision in *Da'Bell v NSPCC* there was considerable uncertainty in relation to the whether the level of compensation for injury to feelings remained bound by the guidelines identified in 2002 in *Vento v Chief Constable of West Yorkshire Police*, or whether those limits should be increased to reflect inflation.

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In *Da'Bell v NSPCC* the EAT has held that the guidelines for damages for injury to feelings in discrimination cases should be increased to reflect the inflation rate. The limits have therefore increased as follows:-

- lower level: £ 5,000 to increase to £ 6,000
- middle level: £ 15,000 to increase to £ 18,000
- upper level: £ 25,000 to increase to £ 30,000

This judgment clearly increases employers' potential liability for an injury to feelings award in discrimination and is a reminder of the potentially costly nature of such cases. It should be noted that the figures above are not the maximum awards that can be made in discrimination claims but rather are the amounts that can be made under the "injury to feeling" head of claim. Employers should remember that there is no limit to the maximum award that can be made in a discrimination claim and the Tribunal statistics referred to below include details of at least one award in excess of one million pounds.

Free Guide For Company Directors Produced By Morton Fraser

With the introduction of new statutory duties for all company directors, and given the difficult trading conditions being experienced by companies across all sectors, company directors need support more than ever in understanding their legal powers and responsibilities.

To address this need, Morton Fraser has produced a free guide on being a director of a private company which is available now from our website at: <http://www.morton-fraser.com/includes/html/getFileData.php?id=8270>

Fresh Consultation On Agency Workers Directive Launched By Government

Following talks earlier this year the Government has invited further discussions on the implementation of the EU Agency Work Directive into UK law. It is seeking views on the way it is approaching the crucial elements of the directive such as who should be included, the meaning of pay, holiday entitlement, length of working time and the 12-week qualifying period. This additional period of consultation is to allow the recruitment industry to 'prepare and plan'. The consultation will close on 11 December 2009 and the intention of Government is to implement the Directive in October 2011.

Further information can be found at: <http://www.berr.gov.uk/consultations/page53060.html>

Government Publishes Its Regulatory Programme For The Period Up To April 2011

The Government has released details of its intended changes to legislation in the next 18 months. The most significant proposals for employers are:

- The ACAS Code Of Practice On Time Off For Trade Union Duties And Activities is due to come into force in January 2010.
- Regulations outlawing trade union blacklists are due to come into force between January and April 2010.
- The Apprenticeships, Skills, Children and Learning Bill is due to come into force in September 2010.
- The Equality Bill is due to come into force in October 2010, save for some specific public sector equality duties, which are due to come into force in April 2011.
- The Government intends to introduce the right to request time off to train for businesses with more than 250 employees in April 2010 and to extend this to all businesses in April 2011 or later.

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Edinburgh Office Move

Our offices

From 9 November 2009 Morton Fraser's Edinburgh offices are relocating from 30-31 Queen Street to Quatermile 2, Lister Square, Edinburgh EH3 9GL. All telephone numbers remain the same.

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