

Pensions law – the week in review

21 September 2009

AT A GLANCE

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1 DEPARTMENT FOR WORK AND PENSIONS (DWP)

1.1 Consultation on Employer Debt regulations

On 17 September 2009, the DWP published a consultation on draft regulations to amend the Occupational Pension Schemes (Employer Debt) Regulations 2005 (the Employer Debt regulations). They propose the introduction of two easements to the Employer Debt regulations where there is a corporate restructuring. If certain conditions are met, such an event will not trigger an employment-cessation event and therefore no

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debt will arise. Certain technical amendments to the Employer Debt regulations are also set out in the consultation. We will be publishing an Alert on the proposals shortly.

The consultation (to which Sackers will be responding) closes on 19 November 2009.

The DWP's press release and the consultation document can be accessed by clicking on the links below:

<http://www.dwp.gov.uk/newsroom/press-releases/2009/september-2009/dwp035-09-170909.shtml>

<http://www.dwp.gov.uk/docs/consultation-employer-debt-draft-regs.pdf>

2 HM REVENUE & CUSTOMS (HMRC)

2.1 Guidance on the Special Annual Allowance (SAA)

HMRC has produced technical guidance on the SAA (which was first announced in this year's Budget¹) for inclusion in the Registered Pension Schemes Manual (RPSM).

While the online version of the new RPSM pages will not be published until the end of October, HMRC has published a PDF version of the new pages to enable people to see what the guidance will cover.

HMRC's announcement and updated collated guidance can be accessed by clicking on the links below:

<http://www.hmrc.gov.uk/pensionschemes/guidance-special-allowance.htm>

<http://www.hmrc.gov.uk/pensionschemes/chapter15v2.pdf>

¹ For more information on the SAA, 2009 Budget and Finance Act 2009, please see our Alerts: "Budget 2009 – Building Britain's future" (dated 23 April 2009); "Finance Bill 2009 - Limited relaxation of transitional provisions" (dated 10 July 2009); and "Finance Act 2009 - This time it's personal" (dated 24 July 2009), all of which are available from the client area of our website or from your usual Sackers contact

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3 PENSIONS POLICY INSTITUTE (PPI)

3.1 Report on retirement income and assets: how can housing support retirement?

This is the second in a series of research reports on retirement income and assets in the UK. The report (sponsored by Prudential UK & Europe) considers the role that housing wealth could play in supporting retirement for today's pensioners and for future generations of pensioners.

The report indicates that housing wealth could play a greater role in supporting retirement in the future. It also shows that although not everyone has housing wealth, those who do will not always view it as a way to save for retirement. It is generally viewed as complementary to private pension saving rather than as a substitute for it.

The PPI's press release and the report can be accessed by clicking on the links below:

[PPI press release](#)

[Report: Retirement income and assets: how can housing support retirement?](#)

4 THE PENSIONS REGULATOR (TPR)

4.1 Guide for employers on effective pensions communications

In conjunction with the Financial Services Authority, TPR has produced a guide for employers on "Talking to your employees about pensions".

The leaflet sets out questions that employers may be asked by their employees about pensions and suggests answers and other sources of information that employees can refer to. It forms part of TPR's ongoing campaign to address the risks facing defined contribution scheme members, but it will also be relevant to employers with defined benefit schemes. It is not intended to add to the existing burdens on employers, but "to look at the activities they can do voluntarily, at little or no cost, to help their employees to get greater value from [their] scheme."

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Communicating with members about their retirement options will gain even greater significance in the run up to 2012, with the introduction of the Personal Accounts scheme and the new legal duty on employers to automatically enrol employees into a qualifying pension scheme. In preparation for this, TPR hopes that its latest leaflet will encourage employers to “talk more openly and comfortably about pensions.”

TPR’s leaflet can be accessed by clicking on the link below.

<http://www.thepensionsregulator.gov.uk/pdf/TPRFSAGuideForEmployers.pdf>

5 CASES

5.1 London Borough of Tower Hamlets v Wooster (Employment Appeal Tribunal (EAT))

The EAT has recently upheld an employment tribunal (ET) decision that the London Borough of Tower Hamlets’ dismissal of an employee shortly before his 50th birthday, to avoid him becoming entitled to take early retirement, was direct age discrimination.

Background

Mr Wooster (W) had been employed by the London Borough of Tower Hamlets (the Council) for more than 30 years. Towards the end of his employment with the Council, W was working on secondment at a social housing landlord (EEH). The Council wrote to W informing him that, when his secondment ended, he would be made redundant unless alternative employment could be found for him during a twelve week redeployment period. He was encouraged to apply for voluntary redundancy. He did this, reluctantly, and his employment with the Council was terminated just over six months before his 50th birthday.

Had he been aged 50 or over when his employment terminated, he would have been eligible for an unreduced early retirement pension. EEH had offered to keep him on until his 50th birthday (and to pay his salary, which had previously been paid by the Council), so that he would not miss out on this benefit, but the Council declined the offer.

Decision

The ET found the Council liable for unfair dismissal and age discrimination, on the basis that it had made insufficient effort to redeploy W and because it had been motivated “by a wish to avoid the additional costs of him taking early retirement at age 50”.

The Council appealed against the finding of age discrimination. It argued that the ET should not have taken account of the Council’s motivation for refusing EEH’s offer (i.e. that the resulting employment would have entitled him to enhanced pension benefits), and that it would have been acting outside its powers to have accepted that offer. It also argued that the tribunal had not used the correct “hypothetical comparator” for assessing whether there had been age discrimination.

The EAT held that:

- while the Council was justified in refusing to continue W’s secondment for the purpose of allowing him to reach age 50 and then take early retirement, to take into account his impending entitlement to a pension in the application of its redundancy and redeployment policy constituted age discrimination; and
- that the ET was entitled, on the evidence, to find “as a practical certainty” that W would, but for the matters complained of, have been found alternative employment.

Comment

The decision in this case serves as an important reminder to employers to follow due process when contemplating redundancies, and to consider carefully all types of discrimination legislation when making decisions of this nature.