

Pensions law – the week in review

30 March 2009

AT A GLANCE

DEPARTMENT FOR WORK AND PENSIONS

- DWP Research Report 570: Understanding why some employees don't participate in employer pension schemes

OFFICE FOR NATIONAL STATISTICS

- Pension Trends: ONS updates two chapters of its report

CASE

- Royden and others v Barnetts Solicitors

1 DEPARTMENT FOR WORK AND PENSIONS (DWP)

1.1 DWP Research Report 570: Understanding why some employees don't participate in employer pension schemes

The DWP has published a research report by Suzanne Hall and Wendy Floyd which presents findings from qualitative case study research which is aimed at exploring and understanding reasons for non-participation in pension schemes where there was a 3% or more employer contribution. (3% will be the minimum employer contribution level to defined contribution pension arrangements under the forthcoming personal accounts regime which is due to commence in 2012.) The research is based on fifty-one face-to-face interviews which were conducted with employees, and 17 with employers, from nine companies across a range of locations, industry sectors and sizes between January and May 2008.

The research was designed to identify reasons given by employees for not participating in their company pension scheme, and to assist in understanding how employees had made choices about joining the

Pensions law – the week in review 30 March 2009

scheme, whether they had engaged with the information provided to them, the extent to which the information was used by employees, and whether they had made informed decisions.

On the whole, most of the employees interviewed reported that they had no particular reason for not joining their company pension scheme and assumed that they would have sufficient savings to live on in retirement. The authors comment that many felt that had they been automatically enrolled in the scheme when they joined the company they would have remained in it.

To view the report, please click on the link below:

<http://www.dwp.gov.uk/asd/asd5/rports2009-2010/rrep570.pdf>

2 OFFICE FOR NATIONAL STATISTICS (ONS)

2.1 Pension Trends: ONS updates two chapters of its report

The ONS has updated two chapters of its “Pensions Trends” report to take account of changes introduced by the Pensions Act 2008 and to reflect updated pensions statistics to the end of 2007.

The revised chapters are chapter 8: “Pensions Contributions” and chapter 14: “Pensions and National Accounts”. These can be accessed by clicking on the links below:

Chapter 8: <http://www.statistics.gov.uk/cci/nugget.asp?id=1278>

Chapter 14: <http://www.statistics.gov.uk/cci/nugget.asp?id=1283>

Pensions law – the week in review 30 March 2009

3 CASE

3.1 Roydon and Others v Barnetts Solicitors

This employment tribunal case considered the extent to which there had been “service provision change” under TUPE¹ (which would lead to a transfer of staff from one firm to the next), when a client moved its business from one firm of solicitors to another.

Background

In this case, all six claimants were employees of Lees Lloyd Whitley (LLW), a firm of solicitors. They worked in various capacities in the firm’s conveyancing department, one of whose clients was the Britannia Building Society (BBS).

Following a tender by BBS for its work in 2006, Barnetts Solicitors won the BBS conveyancing work with effect from 1 June 2007. Six members of the LLW conveyancing team claimed that there had been a transfer of an undertaking from LLW to Barnetts from that date.

Service provision changes

Under TUPE, a service provision change occurs when “activities” previously carried out for a client are transferred to another person or organisation. TUPE will apply to a transfer of an “organised grouping” of employees (which could comprise just one employee) where the “principal purpose” of the organised grouping is to provide a client with services on an ongoing basis.

Decision

The tribunal concluded that the work for BBS by LLW constituted “appropriate activities”, and that carrying out these activities was the “principal purpose of the “organised grouping” of employees. This meant that there had been a service provision change when BBS appointed Barnetts to act.

¹ The Transfer of Undertakings (Protection of Employment) Regulations 2006

However, in order to determine whether individuals within the LLW conveyancing team would in fact transfer to Barnetts, the tribunal had to ascertain the extent to which they carried out work for BBS. While none of the claimants worked exclusively for BBS, only two of the fee earners were considered to be assigned to BBS, on the basis “that non-BBS work was a relatively peripheral element” of their duties. The other four claimants could not be considered to be assigned to BBS, as more than half of the work they did was for clients other than BBS.

Comment

One of the key aspects in determining whether there has been a service provision change amounting to a transfer of employment under TUPE, is the percentage of time spent working on matters for a particular client. Although tribunals have been reluctant to put a precise figure on what percentage would amount to a “principal purpose”, they have accepted that an employee spending 70% of their time working for a client was primarily engaged in a business and therefore transferred under TUPE, even though they also worked on other accounts. Generally speaking, TUPE will potentially apply where an individual spends 50% or more of his or her time working for one particular client.

For trustees and employers of occupational pension schemes, a service provision change is most likely to arise when a scheme’s administration service provider is changed. It is therefore worth considering at the outset how an administrator’s employees are to be treated on termination of a contract.

For more information, please refer to our “Employment Unit Focus” dated September 2008 (available from the client area of our website or from your usual Sackers contact).



Solicitors specialising in pensions law

Sacker & Partners LLP
29 Ludgate Hill
London EC4M 7NX
Tel 020 7329 6699
Fax 020 7248 0552

enquiries@sackers.com
www.sackers.com