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PENSIONS REGULATOR FINES FIRST EMPLOYERS FOR BREACHES OF AUTOMATIC ENROLMENT DUTIES

The amount of enforcement action taken against employers for non-compliance with their automatic enrolment duties rose considerably in September, according to the Pensions Regulator, which has also recently issued its first fines for breaches.

According to its latest quarterly report the regulator issued 163 compliance notices and three fixed penalty fines between July and September this year. The period coincided with a "significant rise" in the number of employers subject to the regime, after thousands of medium-sized employers with between 150 and 250 staff began enrolling their workers into qualifying workplace pension schemes in April.

Charles Counsell, head of automatic enrolment at the regulator, said that small and micro-employers that were not yet subject to the requirements should check their 'staging dates' now and prepare early. "We know most employers want to do the right thing and comply with the law," he said. "Where we take enforcement action by issuing a compliance notice, this gives employers the necessary wake-up call to provide the pensions their employees are due."

"As we deal with smaller employers, we will see more who, despite our message to prepare early, leave it too late or do not comply at all. This type of non-compliance is not acceptable. More than 1.25 million employers need to comply with their new workplace pensions over the next three years. For all these employers it is vital that they find out their staging date now, and plan early to ensure that they are ready in time," he said.

Automatic enrolment began for the largest employers in October 2012, and will ultimately result in up to 11 million people saving more towards their retirement or saving for the first time. Under the programme, more than 1.3 million employers will have to automatically enroll workers into a pension scheme which meets certain minimum requirements, and will be legally obliged to make contributions towards the pensions of automatically enrolled workers that do not opt out of the scheme.

Powers available to the Pensions Regulator to enforce employer compliance with their duties under the regime include the ability to carry out inspections; issue statutory notices, fixed penalties and escalating fines of up to £10,000 per day. The latest report showed that the regulator had only issued 14 compliance notices, giving employers a deadline within which to take a certain action, up to the end of June 2014. It had issued 177 such notices up to the end of September, as well as three £400 fixed penalties for failure to comply with such a notice.

The report also highlighted the regulator's recent awareness-raising work targeting small and micro-employers, some of which only employ one or two workers. Research conducted by the regulator into employer awareness, as well as calls to its contact centres, have shown that some of these

employers still do not realise that the law applies to them, it said.

For auto-enrolment to be a success, the Pensions Regulator needs to do all it can to make sure employers are aware of what is required, and of the importance of taking action early. Fines can help to ensure employers take their duties seriously, but it is far more important to try to prevent problems arising in the first place.

The Federation is launching its own holidays with pay, sick pay and benefits scheme. Look out for the packs early in the New Year.

EMPLOYER JUSTIFIED IN NOT PROVIDING ENHANCED PAY FOR EMPLOYEE ON ADDITIONAL PATERNITY LEAVE

'Isn't it time you went back to work? Benny was born in 1982'

In *Shuter v Ford Motor Co Ltd*, the employment tribunal held that an employer did not unlawfully discriminate against its male employee who was on additional paternity leave (APL), by only paying him the statutory rate of additional paternity pay, when a female employee on maternity leave would have been entitled to full basic pay.

Mr Shuter (S), an employee of Ford Motor Co (Ford), was offered maternity leave of up to 52 weeks at full pay. S went on to take 26 weeks' additional paternity leave, but was paid the statutory minimum for this, as per Ford's standard maternity policy. After 20 weeks of APL, S lodged a claim for direct and indirect sex discrimination, alleging that S had treated him differently to how a mother on maternity leave would have been treated, and argued that he had been paid roughly £18,000 less for an equivalent amount of leave.

The tribunal dismissed S's claim for direct discrimination, stating that the comparator in this instance would be a woman taking APL (as the spouse or civil partner of the mother) and held that she would not have been treated any differently to S. S argued that that Ford's policy of "paying women basic pay when on leave beyond 20 weeks after the birth of the child" was indirectly discriminatory. In this regard, the tribunal did find that this was a policy which put a group of employees at a disadvantage. However, Ford successfully justified this stating that the policy sought to enhance the recruitment and retention of women in the workforce, and used statistical evidence to show that the introduction of enhanced maternity pay had increased the number of female employees.

Tribunals are likely, but not guaranteed, to follow this decision so employers should take note as the APL scheme is soon to be abolished to make way for the new shared parental leave system, which comes into force in December this year for babies born from April 2015. It may well yet transpire that offering enhanced maternity pay, but only offering statutory minimum shared parental pay, could result in a claim for sex discrimination, particularly as this case is only a first-instance tribunal decision and may be overturned on appeal.

EMPLOYING OFFENDERS – A DANGEROUS GAME?

Is it immoral, illegal or irresponsible to employ somebody who has a past criminal record?

The possibility that former Sheffield Utd footballer and convicted rapist, Ched Evans, may be permitted to play professional football following his release from prison has been met with anger from many fans and campaigners of victim support groups. Evans is determined to clear his name and the Criminal Cases Review Commission is fast-tracking his appeal which may overturn the conviction. In the meantime, a petition against Evans' return to playing has been signed by over 150,000 fans and Sky Sports presenter, Charlie Webster has threatened to quit as the club's patron if he is re-signed. West-Ham vice-chair and entrepreneur, Karren Brady, has stated *"there is no place anywhere in football"* for Evans while celebrities and commentators who have questioned the trial evidence and the jury's decision have received wide criticism.

Pending the outcome of the case review, there is likely to be further disagreement within society. However, the dilemma does raise the difficult question as to whether employers can or should recruit staff with a criminal conviction?

Employers have a degree of discretion when deciding to recruit a candidate with a criminal conviction which is not yet 'spent'. Of course, those offenders who have been placed on the sex-offenders register are prevented from working in a variety of jobs with children and protected adults. However, there is a common misconception that candidates are obliged to disclose all previous criminal records when applying for a position.

The Rehabilitation of Offenders Act 1974 provides that, after a period of time, certain convictions become spent and applicants are no longer obliged to disclose their previous record to their employer. Of course, there are exceptions. For example, any convictions that resulted in a custodial sentence of at least 30 months are never spent and must always be disclosed to the employer. Further, certain professions such as doctors, accountants, solicitors, teachers, social service workers and police officers require all convictions to be disclosed by applicants, whether they have expired or not. Where an employer dismisses an employee for failing to disclose a spent conviction, there may be grounds for an unfair dismissal claim. Likewise, when an employer refuses an applicant solely on the basis of a spent conviction, the employer will be in breach of its statutory duties under the 1974 Act.

Whilst employers such as Sheffield Utd are understandably reluctant to recruit ex-offenders, businesses must exercise caution when making recruitment decisions. Employers should familiarise themselves with the legislation that distinguishes between different forms of 'spent' and 'unspent' convictions in order to avoid claims being raised against them.

WITH BEST WISHES FOR THE FESTIVE PERIOD AND A PROSPEROUS 2015

Monthly Bulletin of Indices

YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
2003	631	632	632	635	635	632	664	667	667	667	667	667
2004	667	667	666	666	667	667	709	709	710	710	711	712
2005	711	713	713	713	713	714	769	769	769	768	769	770
2006	769	770	770	769	769	769	793	794	793	793	793	793
2007	793	795	795	795	795	795	824	825	825	825	826	826
2008	826	827	827	831	831	832	874	874	874	873	873	874
2009	874	875	874	874	875	875	875	875	875	876	876	876
2010	876	878	878	878	879	879	879	879	879	879	880	880
2011	880	885	885	885	888	889	898	898	909	908	908	911
2012	910	911	913	912	910	912	912	914	915	915	924	924
2013	939	940	943	942	941	938	937	937	938	937	937	937
2014	941	941	942	941	941	941	961	961	961*	960*	960*	

*Provisional