

# New employment law in 2001



**This briefing provides an overview of the developments in employment law in 2001. It follows publications covering the same area for 1999 and 2000.**

Developments in business law more generally are covered separately, in **New business law in 2001**. There are titles covering the same area for 1999 and 2000.

These briefings identify changes that might affect your business, but do not deal with issues in detail. If you need to know more, talk to your professional adviser, or follow the cross reference to the appropriate Directors' Briefing.

This briefing covers:

- New laws.
- New regulation.
- Key court decisions, in areas important to small businesses.

## 1 Fraud penalties

Government agencies get new powers to act against suspected social security fraud in the Social Security Fraud Act. In principle these are designed to check unnecessary government spending. In practice they are likely to mean more hassle for many employers, and the risk of penalties or prosecution for some.

### 1.1 There are provisions for **checking information** held by independent sources.

These have been introduced in addition to the existing powers to check with employers, because the government fears some employers may be colluding in fraud.

- Independent sources include credit reference agencies, banks, building societies, telecommunication companies and other utilities. Others may be added later through regulations.
  - Under the provisions of the Act, these organisations can be compelled to give information, or to provide access to information held in electronic form.
- 1.2** In future, employers colluding in social security fraud may be allowed to pay a **penalty**, rather than face prosecution.
- A penalty of up to £1,000 may be required where there is evidence that an employer has hindered an investigation.

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- A larger penalty (up to £1,000 per employee involved, up to a maximum of £5,000) may be required where there is evidence that an employer has actively helped employees to commit fraud (whether that fraud was committed or not).
- Employers have 28 days to decide whether or not to pay the penalty (or whether to withdraw from any agreement to pay). If they decide against paying, the Department for Work and Pensions may go ahead and prosecute.

The intention is to apply sanctions against more employers, while avoiding (if possible) the delays, man-hours and uncertainties involved in full-scale prosecution.

### 1.3 The **sanctions apply** to those who employ people to work in any capacity.

- This includes contract workers and the self-employed.
- Both employers and the individuals within their organisations with a delegated responsibility to appoint staff, are potentially liable to these sanctions.  
Effective 1 January 2002.

## Share options

There have been moves to limit employers' liability for National Insurance contributions (NICs) on the exercise of some employee share options in the Social Security Contributions (Share Options) Act. The Act applies to unapproved share options issued in the limited period from 6 April 1999 to 19 May 2000.

- Where gains on such options would otherwise be treated as employee pay (or benefits) — and therefore subject to Class 1 NICs from the employer — the Act limits the chargeable gain to the amount that would have arisen if the options had been exercised on 7 November 2000.
- To benefit from this concession, employers must have notified the Inland Revenue that they intended to use it within 92 days of the Act coming into force.
- The Inland Revenue has discretion to extend the 92 day period, but only where the person responsible for paying the NICs had a reasonable excuse for failing to meet the deadline.

Effective 11 May 2001.

## 2 Tightening security

The Private Security Industry Act provides for the statutory regulation of the security industry.

### 2.1 The Act applies to both organisations and individuals involved in **security activities**. These include:

- Guarding people and property (including bouncers and keyholders).
- Wheelclamping and use of other immobilization devices on private property.
- Private investigations (excluding activities solely involved with credit reference).

### 2.2 Individuals involved in these activities must be **licensed**.

- Licences will be granted by the Security Industry Association (SIA), which will be created under the Act.
- The licensing requirement applies to (almost) everyone involved in the industry. This includes contractors, directors and partners in security companies and firms, their employees, and those who work for security organisations on a contract basis.

But people who are simply involved in checking tickets or passes are excluded.

- Providing security activities without a licence is a criminal offence, with penalties of up to six months in prison, a £5,000 fine, or both.
- Employing someone without a licence is also a criminal offence.

### 2.3 To obtain a licence, applicants will have to prove they are **'fit and proper'** persons.

- They may also have to provide evidence of identity, training and insurance.
- Licensing conditions can be varied to suit the job, and may be amended by the SIA.
- The SIA will have powers to refuse, revoke, modify or suspend licences. Applicants will be able to appeal to the magistrates' court and, if necessary, to the Crown Court.  
Effective 2003 or later.

## 3 Tax measures

### 3.1 The **Finance Act** contained some measures relevant to employers.

- Income tax allowances and bands were adjusted (see **Tax and NI**).
- National Insurance thresholds and ceilings were adjusted.
- The impact of capital gains tax on

employee-shareholders working for non-trading companies (except for those with a 'material interest') was eased (see **Incentive pay**).

## 4 Regulations

### 4.1 Dispute resolution

- There are new employment tribunal rules, designed to deter parties from taking (or defending) unreasonable positions before an employment tribunal.  
The maximum deposit that the tribunal can require, after a pre-hearing review has been increased from £150 to £500.  
Maximum costs that can be awarded have been increased from £500 to £10,000.  
Effective 16 July 2001.
- An ACAS arbitration scheme for speedier resolution of unfair dismissal claims which would otherwise go to a full tribunal hearing has been established.  
Effective 21 May 2001 (in England and Wales).
- Where part time workers bring a claim for less favourable treatment, it is now open to both parties to go to ACAS.  
Effective 1 May 2001.

### 4.2 Pay

- The national minimum wage for workers aged 18-21 has risen from £3.20 to £3.50 an hour.  
Effective 1 October 2001.
- The national minimum wage adult rate has risen from £3.70 to £4.10 an hour.  
Effective 1 October 2001.
- Both the development rate and the adult rate will rise again next year (to £3.60 and £4.20 respectively), assuming that there are no radical changes in economic circumstances.  
Effective 1 October 2002.

### 4.3 'Family friendly' policies

- Parental leave (up to 13 weeks' unpaid leave) has been extended to parents of all children born or adopted between 15 December 1994 and 14 December 1999. Parents of such children must have at least one year's continuous service with their present or previous employer. They have until 31 March 2005 to take the leave.  
Effective 10 January 2002.

- Parental leave for parents of disabled children (to be taken before their 18th birthday) has been extended from a maximum of 13 weeks to a maximum of 18 weeks.  
Effective 10 January 2002.
- Statutory maternity pay (SMP) is to rise from £62.20 to £75 a week.  
Effective April 2002.
- Statutory maternity pay is to be increased to £100 a week, and payment at the enhanced rate extended from 18 to 26 weeks.  
Effective April 2003.
- The Small Employer's Relief (allowing small employers to reclaim the costs of SMP plus compensation) is to rise from a maximum of £20,000 to a maximum of £40,000.  
Effective April 2002.

### 4.4 Holidays

- Employees are entitled to paid leave from the day they join (instead of having to wait 13 weeks, as they did before).  
An accrual system may be applied for workers whose employment began on or after 26 October 2001.  
They will be entitled to receive one twelfth of their annual leave entitlement in advance for each month worked, rounded up to the nearest half-day.  
Effective 25 October 2001.

### 4.5 Discrimination

- Once a complainant has established facts indicating discrimination, it is now up to the employer to prove that the discrimination does not exist.  
Effective 12 October 2001.
- The definition of 'indirect sex discrimination' has been refined. It occurs when a 'provision, criterion or practice' is applied to the detriment of a substantially higher proportion of women than men, unless it can be objectively justified.  
Effective 12 October 2001.
- A new Immigration Employment Code, guiding employers on the measures they should take to avoid taking on unlawful immigrants, without breaching the discrimination legislation, has come into effect.  
Effective 2 May 2001.

### Letter of the law

The full text of all Acts of Parliament is available on the HMSO website at [www.opsi.gov.uk/legislation/index.htm](http://www.opsi.gov.uk/legislation/index.htm), complete with explanatory notes and a search engine to help locate information quickly.

### More information

- ➔ See **Employment law: the basics**.
- ➔ See **Employment contracts**.
- ➔ See **Working time and the minimum wage**.
- ➔ See **Maternity issues and SMP**.
- ➔ See **Sickness issues and SSP**.
- ➔ See **Discrimination**.
- ➔ See **Discipline and grievance issues**.
- ➔ See **Employment tribunals**.
- ➔ See **Redundancy**.
- ➔ See **Dismissing employees**.
- ➔ As of 18 April 2005, the Inland Revenue and HM Customs & Excise merged to become HM Revenue & Customs. Get more information from the website at [www.hmrc.gov.uk](http://www.hmrc.gov.uk).

## 4.6 Recruitment

- Under new employment agency rules, employers who want to take temporary staff on permanently must be offered the option of an extended hire period, rather than being required to pay a transfer fee. No transfer fee can be demanded if the worker is taken on more than eight weeks from the last day of hire, or 14 weeks from the first day of hire, whichever is the later. Effective during 2002.
- A new code, expected to be issued shortly by the Office of the Information Commissioner, is likely to confirm that job applicants will almost always have a right to see all notes made about them during job interviews if they make the appropriate request.

## 4.7 Benefits

- Companies now qualify to grant options under the Enterprise Management Incentive Scheme if they have gross assets of up to £30m (previously £15m). Effective 1 January 2002.
- For tax purposes, the interest rate on beneficial loans (loans provided by employers to employees earning more than £8,500 a year) is now assumed to be five per cent (previously 6.25 per cent) a year. Effective 6 January 2002.

## 5 Case law

These cases have been selected because they are potentially important or interesting to small and medium-sized companies.

Decisions of the House of Lords (HL) take precedence over those of the Court of Appeal (CA), which take precedence over those of divisions of the High Court (for example, Chancery or Queens Bench Division). Decisions of the European Court of Justice (ECJ) take precedence over those of the British courts.

### 5.1 Equal pay

- Where two employees of different sex are taken on at different rates of pay for the same work, or work of equal value, the difference cannot be justified by differences in performance not apparent until after they had started work. *Brunnhof v Bank der österreichischen Postsparkasse AG (Case C381/99) (ECJ)* 26 June 2001.

### 5.2 Discrimination

- Where a former employee (in this case a policeman) is bringing discrimination proceedings against an employer, the employer is entitled to preserve his position (in this case by refusing a reference) ahead of the case, without laying himself open to a charge of victimisation. *Chief Constable of the West Yorkshire Police v Khan (HL)*, 11 October 2001.
- An employment tribunal cannot hear a complaint of sexual harassment made by a former employee. The complaint can only be heard if it is made before the employment contract is terminated. A claim of victimisation would be allowed. *Rhys-Harper v Relaxion Group plc (CA)*, 3 May 2001.
- Where an employer treats an employee (in this case an employee with diabetes who was substantially removed from driving duties after having a heart attack and being prescribed insulin) less favourably, but after a properly conducted risk assessment with material and substantial medical evidence, the employment tribunal must consider whether the reason meets the statutory criteria. It cannot make its own appraisal of the evidence, or conduct its own risk assessment. *Post Office v Jones (CA)*, 11 April 2001.

### 5.3 Employment contracts

- Where an employee sues an employer, following summary dismissal, for breaching a contract of employment which stipulated that either side could give six months' notice, or the employer 'may make a payment in lieu of notice', the correct amount of damages is the amount the employee would have received had the employment continued during the notice period — less any earnings from new employment secured in that period. *Cerberus Software Ltd v Rowley (CA)*, 18 January 2001.

### 5.4 Transport

- Where a driver is instructed to travel to a pick up point away from home or the employer's operation centre, to collect a vehicle subject to tachograph requirements, the time spent doing so should be recorded on the tachograph sheets as 'other periods of work'. *Criminal proceedings against Skills Motor Coaches Ltd and Others (Case C297/99) (ECJ)*, 18 January 2001.

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Employment law is complex and changes rapidly. This briefing reflects our understanding of the basic legal position as known in 2002. Obtain legal advice on your own specific circumstances and check whether any of the relevant rules have changed.

## Further help

There are other Directors' Briefing titles that can help you. These briefings are referred to in the text by name.

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