

## NeTWork

19<sup>th</sup> May 2010

### **Employment implications of the Coalition Government**

**With the combined manifestos of the Conservative and Liberal Democrat parties yet to be put to Parliament in the Queen's Speech, it is unclear how the Coalition Government will effect various aspects of employment law moving forward.**

Below is a brief summary of how some areas of employment law may change over the next five years.

#### *1. Work and families*

The Liberal Democrats stated in their manifesto that they would allow parents to share maternity and paternity leave between them for the 18 months following the birth. The Conservatives did not go as far as that, but they also pledged in their manifesto to introduce a new system of flexible parental leave. We wait and see how these two promises will be put into practice.

The Liberal Democrats promised to extend the right to flexible working to all employees, but the Conservatives planned to extend it in stages; first to those with children under 18, then to public sector workers and finally to all employees. Although this is a long-term aim, it is anticipated that some extension to the right to flexible working will occur under the Coalition.

#### *2. Default Retirement Age*

Both parties pledged before the election to abandon the Default Retirement Age and the Coalition agreement states that the DRA will be phased out, although when and how are not yet clear.

#### *3. The Equality Act 2010*

Pushed through Parliament with the final wave of Bills before the General Election, the Equality Act is employment law's current hot topic. However, both the Liberal Democrats and the Conservatives have divergent views on various aspects of it. The Liberal Democrats would have liked the Act

to be more wide-reaching, yet the Conservatives think it has gone too far and have promised not to enact certain parts of it.

In terms of equal pay audits, the Liberal Democrats would impose them on all employers with over 100 employees, whereas the Conservatives would only impose them on those employers found at a tribunal to have discriminated on the basis of gender.

Having said they would not enact the positive discrimination provisions contained in the Act, the Conservatives have stated they would require the long list of all executive and non-executive directorships to include 50% female candidates. They would also require all non-executive directorship positions to be advertised.

#### 4. TUPE

The Conservatives stated before the election that they would amend current provisions relating to service provision changes where they go beyond that which is required by the Acquired Rights Directive. The Liberal Democrats have said nothing about this issue.

#### 5. Agency workers

The Conservatives stated before the election that they would review the Agency Workers Regulations, in particular the proposed 12 week qualifying period. In March David Cameron proposed that they be revoked.

### **Misconduct dismissals and police involvement**

*(Secretary of State for Justice v Mansfield)*

**The Employment Appeal Tribunal finds that where an employee faces disciplinary proceedings at the same time as being investigated by the police, the decision maker has a wide discretion as to whether to continue or postpone the disciplinary proceedings.**

In this case a prison officer faced disciplinary proceedings and a police investigation for allegations against him of orchestrating violence among prisoners and planting drugs on a fellow prisoner. The internal investigation was suspended pending the police investigation. The allegation of orchestration of violence was dropped before the matter got to the Crown Court, and the drugs charge returned a verdict of not guilty at the Crown Court following the CPS' failure to offer any evidence against the employee.

The internal investigation did not continue until three months after the court case and there was a further delay of six months before a final report was delivered. The disciplinary hearing was started a further three months later and the Claimant was finally dismissed one month after that. He appealed twice and on each occasion the decision to dismiss was upheld. He brought a claim for unfair dismissal.

At first instance, the tribunal found that there had been a lengthy and unacceptable delay in the proceedings leading up to the Claimant's dismissal, against the terms of the Prison Service rules which allowed postponement of an internal investigation only in certain circumstances or where they may prejudice a criminal investigation.

On this point, the EAT found that the decision-maker should have a wide discretion when deciding whether to continue an internal investigation alongside a criminal investigation. In this case, the prison service took care to ensure that the disciplinary proceedings did not prejudice the criminal proceedings, and the EAT held that their decision to postpone the internal investigation was "entirely proper". There was also no prejudice caused to the Claimant as a result of the postponement.

In addition, the EAT held that the Tribunal had substituted their own view for that of the Respondent, holding that the Respondent did not have an honestly held belief that the Claimant was guilty of the misconduct in question. The EAT held that as the Tribunal had not heard the evidence from the investigation, it was unable to make this judgement and it had substituted its own view rather than focussing on whether the Respondent had acted fairly and reasonably in the circumstances. Accordingly the Tribunal decision was set aside and the claim of unfair dismissal dismissed.