

The Educational Institute of Scotland

Employment Law Reforms Report

1. Introduction

- 1.1 The following resolution was approved by the 2012 Annual General Meeting:

"This AGM instructs Council to investigate and report on the impact of the UK Government's employment law reforms and further instructs Council to organise a campaign of resistance to any deterioration in members' employment rights."

2. Collective Redundancies

- 2.1 The Government has announced its intention to reduce the 90 days consultation period for making over 100 employees redundant in any establishment to 45 days. There is no proposed change in the consultation period of 30 days when it is contemplated making fewer than 99 people redundant. This will take effect from 6 April 2013.
- 2.2 The Government does not intend to reduce the period of the Protective Award alongside the proposed reduction of the 90-day minimum period. The amount of the award is linked not to the length of consultation but to the efforts of the employer to comply.

3. Ending the Employment Relationship

- 3.1 The Government has published details of proposals on "protected conversations", to be included in the Enterprise and Regulatory Reform Bill. The provision allows an employer to hold a discussion with an employee with a view to terminating the employment under a settlement agreement, without the employee being able to rely on the details of the conversation as evidence in an unfair dismissal claim. It goes further than the "without prejudice" principle, as it applies even where no formal dispute has yet arisen.
- 3.2 The provision is limited to unfair dismissal claims only; employers would not be able to rely on a discussion being protected where the employee claims discrimination, or any other type of complaint. Further, the provision does not apply to automatic unfair dismissals.
- 3.3 The qualifying period for employees to claim unfair dismissal (and have the right to written reasons for dismissal) increased from one year to two years on 6 April 2012. The increase applies only to employees whose employment with their employer began on or after 6 April. The one-year qualifying period will continue to apply to employees who started with their employer prior to that date.

4. Employment Tribunal Fees

- 4.1 From summer 2013, claimants who want to take an unfair dismissal, equal pay or discrimination case to a full hearing (known as level 2) will

have to pay a fee of £1,200, payable in advance. This will consist of £250 when the claim is lodged and £950 when the hearing begins.

- 4.2 Claims for unpaid wages or redundancy pay, which are administratively relatively simple and are known as level 1 claims, will cost £390 in total, made up of an initial fee of £160 and £230 if the hearing goes ahead.

5. Health and Safety Victimisation

- 5.1 Workers victimised for raising safety concerns will soon have to pay £1,200 if they want to seek justice at an employment tribunal. Anyone who believes they 'suffer a detriment, dismissal or redundancy for health and safety reasons' may be required to pay the initial fee of £250 and a further £950 if the case goes to a tribunal, the maximum 'level 2' charges under the new system.
- 5.2 A safety rep complaining of an employer is "failure to pay for or allow time off to carry out safety rep duties or undertake training" - denial of the legal right to safety rep training makes up the bulk of safety-related tribunal cases - will have to pay £160 to start a case and a further £250 to take it to tribunal.

6. Whistleblowing

- 6.1 Section 14 of The Enterprise and Regulatory Reform Bill (2012), currently making its way through Parliament, would have the effect of protecting whistle-blowers only where the disclosure is made "in the public interest". This could drastically restrict the ability of workers to bring such claims.

7. Criminal Injuries Compensation Scheme - Further Update

- 7.1 Proposals to change the Criminal Injuries Compensation Scheme (CICS) were withdrawn in September 2012 after cross-party opposition and opposition from the TUC. The proposals were reintroduced and were discussed by the Delegated Legislation Committee on Thursday 1 November. They came into effect on 27 November 2012. These changes will have a huge effect on many EIS members who will now be unable to receive compensation from any other course following an assault or attack at work.

8. Transfer of Undertakings

- 8.1 The Government is proposing to streamline TUPE provisions making it easier to vary terms and conditions post transfer, to limit the protected period to 1 year after transfer and to weaken unfair dismissal protections.

9. Conclusion

- 9.1 The Committee is invited to note the contents of this report and to forward it to Executive Committee to consider the campaigning issues.