FACT SERVICE

Annual Subscription £90.05 (£76.00 for LRD affiliates) Volume 79, Issue 9, 2 March 2017

Trade Union Act regs come into force

Regulations covering the provisions in the vindictive 2016 *Trade Union Act* have now come into force.

From 1 March, higher ballot thresholds must be met before trade unions can proceed with industrial action, particularly in relation to "important public services", will come into force. If the majority of those balloted perform one of the important public services specified in the regulations, at least 40% of those eligible to vote must approve the industrial action. These services are education, fire, health, transport and border security, which are further defined in the relevant regulations.

The Act will also require unions to give employers a minimum of 14 days' notice before industrial action rather than the previous seven days. It also sets a six-month time limit – which can be increased to nine months if the union and employer agree – for industrial action.

On other matters relation to the Act, Sir Ken Knight has started gathering evidence for his independent review of electronic balloting for industrial disputes. The consultation closes on 11 May.

The links below take readers to the legislation, regulations, codes of practice and the Knight review.

www.legislation.gov.uk/ukpga/2016/15/contents

www.legislation.gov.uk/uksi/2017/139/pdfs/uksi_20170139_en.pdf

www.legislation.gov.uk/uksi/2017/136/contents/made

www.legislation.gov.uk/uksi/2017/135/contents/made

www.legislation.gov.uk/uksi/2017/133/contents/made

www.legislation.gov.uk/uksi/2017/132/contents/made

www.gov.uk/government/uploads/system/uploads/attachment_data/file/594781/Code_of_Practice_on_Industrial_Action_Ballots_and_Information_to_Employers.pdf

www.gov.uk/government/uploads/system/uploads/attachment_data/file/594788/Code_of_Practice_on_Picketing.pdf

www.gov.uk/government/uploads/system/uploads/attachment_data/file/595547/CfE-E-Balloting-1-March.pdf

Gender pension gap leaves women short

There is a gap between the amount that men and women receive in employer pensions contributions, which if left unaddressed could result in a shortfall of £47,000 by the end of a woman's working life, according to a new indicator from financial services group Zurich.

Last year, on average, men under the age of 35 received £217 more in employer pension contributions than females of the same age, according to its Workplace Savings Barometer. Furthermore, between 2013 and 2016, men have benefitted from pension contributions of 7.8% of salary each year from their employers compared with 7.0% for women.

This difference meant that the value of the employer pension contribution was £3,495 for men and

LABOUR RESEARCH DEPARTMENT
Published weekly by LRD Publications Ltd, 78 Blackfriars Road, London SE1 8HF. 020 7928 3649 www.lrd.org.uk

£2,489 for women – a difference of over £1,000 over the four-year period. With wage growth taken into account, this difference could amount to a shortfall for women of £46,689 by the end of a working life. The analysis of over 250,000 pension plans, broken down by age, gender, employee and member contributions alongside income, is one of the largest ever studies of workplace savings.

The findings lift the lid on three factors contributing to the shortfall in women's pension pots: the gender pay gap leads to a lower value of employer contribution as a percentage of salary; women are still more likely to take career breaks to raise a family and work flexibly; and men typically work in sectors with more established, or more generous, pension schemes.

www.zurich.co.uk/en/about-us/media-centre/life-news/2017/47000-shortfall-in-employer-pension-contributions-for-women

Violence at work – the nasty truth

There were an estimated 698,000 incidents of work-related violence in 2015-16, according to the Health and Safety Executive (HSE).

Assaults accounted for 329,000 or 47% of incidents and 369,000 threats to victims accounted for the remaining 53% of incidents. The number of assaults was broadly similar to the last few years. However, the number of threats was significantly higher due to the inclusion of work-related online threats for the first time.

An occupational breakdown of the workers most at risk shows protective services, including police officers, as the occupational group with by far the highest risk of experiencing workplace violence. Occupations in health and health and social care also had a higher than average risk. A significant number of individuals suffering violence at work were subject to multiple incidents. This may relate to the nature of the job situation or to an endemic problem within a particular area of work.

In 2015-16, of those respondents who were the subject of assault or threat in the workplace, well over half (54%) were assaulted or threatened once while a further one if five (18%) reported being threatened or assaulted twice. The more depressing statistic was that a further quarter (26%) reported being assaulted or threatened three or more times, the HSE said, based on the 2015-16 findings of the Crime Survey for England and Wales (CSEW).

In looking at the physical consequences of assault in the workplace, two-thirds (67%) resulted in no physical injury, while a third (33%) resulted in some physical injury. Minor bruising or a black eye (17%) and scratches (8%) were the most common physical injuries. Severe bruising from heavier trauma was suggested in 6% of physical assaults. Other injuries, including broken bones, broken nose, broken, lost or chipped teeth, concussion or loss of consciousness, facial or head injuries or other injuries, accounted for 5% of assaults.

As well as the CSEW, the HSE uses the *Reporting of Injuries, Diseases and Dangerous Occurrences Regulations* (RIDDOR), which includes Scotland

The RIDDOR reporting system records physical violence only and does not include threats or other verbal abuse. In addition, employers are only required to report those injuries that result in over seven days off work. The HSE admits that non-fatal injuries reported under RIDDOR are known to be substantially under-reported.

RIDDOR reported 4,697 injuries to employees, where the "kind of accident" was "physical assault/act of violence" in Great Britain – this represents 6.5% of all reported workplace injuries. Of this figure, there was one death.

Labour Research Department's latest booklet is *Protecting workers from violence and abuse* (see advert on page 36). The booklet provides practical guidance on how to prevent or reduce work-related violence and abuse, as well as giving advice on what action to take when it does occur.

www.hse.gov.uk/statistics/causinj/violence/violence-at-work.pdf?pdf=violence-at-work

Bookseller's £7m salary

Waterstones, the UK's leading bookshop chain, has been in the headlines, and on the defensive, after going incognito at some of its newer stores.

The firm has opened three shops in Suffolk, East Sussex and Hertfordshire that do not feature its distinctive branding, prompting accusations of deception. But Waterstones' chief executive James Daunt told the BBC the move was justified, saying he wanted the shops to have a more independent feel.

Out of the headlines, but also incognito, is the boardroom recipient of a huge salary. As a private limited company, Waterstones Holdings is only required by company law to give the remuneration bill for its directors and the remuneration of its highest paid director, who doesn't have to be named.

Waterstone's latest annual report and accounts filed at Companies House show that in the year ending April 2016 its highest paid director received £7,249,000. The previous year the unnamed highest paid director – who could be a different person – received "just" £275,000.

The likelihood is that the recipient of the £7 million is Daunt, who was brought in by Russian billionaire Alexander Mamut in 2011 to turn the business around, as in 2016 Waterstone's made a pre-tax profit for the first time since 2008.

www.bbc.co.uk/news/business-39101186
https://beta.companieshouse.gov.uk/company/07673642/filing-history

Money purchase pensions are norm

Defined contribution pensions, also known as money purchase schemes, are now the norm for Britain's biggest companies, new research from financial services group Willis Towers Watson.

The twelfth edition of its *FTSE DC pension scheme survey* found that 98% of new employees at the top stock exchange-quoted companies in the FTSE 350 were joining defined contribution (DC) pension schemes.

However, the report also suggests that DC still has some growing up to do, particularly in areas such as the development of delivery vehicles, contribution designs and member education and support.

The report shows average payments into DC pensions in the top FTSE 100 companies have quadrupled since 2009, while average assets held in those schemes have increased sevenfold over the same period.

Though over half (54%) of FTSE 100 companies still offer defined benefit (DB) pensions to existing members, this proportion has declined from 84% since 2009, while only a quarter (27%) of FTSE 250 employers still have DB schemes open to existing employees, the report finds.

Other key findings include:

- closure of remaining DB schemes continues the trend of recent years and 37% of FTSE 100 companies have closed their DB schemes to future accrual for existing members – up from 29% in 2015;
- over four in 10 (46%) FTSE 100 companies enrol more staff into DC pensions than is required under Automatic Enrolment (AE) rules, and more than nine out of 10 use a definition of pensionable pay that is typically better than "qualifying earnings"; and
- contribution rates have remained broadly stable since the introduction of AE, with FTSE 100 employers committing up to 10% of pay, with a slight fall in contribution rates by FTSE 250 employers;

The report also finds that across the FTSE 350, the use of master trusts has doubled since 2015, from 8% to 15%. A master trust is a multi-employer occupational scheme where each employer has its own division within the master arrangement. There is one legal trust and therefore one trustee board. The trustee retains decision making independence for each division on things such as investment and service providers under a trust-wide governance structure.

The most notable master trust, at present, is the National Employment Savings Trust (NEST) which has been set up by the government especially for auto-enrolment.

www.willistowerswatson.com/en-GB/insights/2017/02/Infographic-FTSE-350-defined-contribution-pension-scheme-survey-2017

British Gas denied appeal in Lock case

The Supreme Court – the final court of appeal in civil cases – has refused British Gas the right to appeal in the long, drawn out Lock holiday pay case.

Lock, a member of the public service union UNISON, was employed by British Gas as a salesperson His remuneration package included basic salary plus commission. When he took holiday, he only got his basic pay. This was significantly less than his normal pay and he said it was a disincentive to take annual leave.

With UNISON support, in 2012, Lock pursued a claim for commission to be part of his holiday pay. The tribunal referred his case to the European Court of Justice (ECJ), and asked the court to confirm whether the Working Time Directive (WTD) required commission to be included when calculating statutory holiday pay.

After the ECJ ruled in Lock's favour, British Gas took its case to the Court of Appeal which, last October, confirmed that when calculating holiday pay, for the purposes of the four weeks of holiday entitlement under the WTD, workers are entitled to be paid an amount which reflects the commission they would have earned had they not been on holiday.

And so on to the Supreme Court. Its refusal to allow a British Gas appeal means the case will go back to the employment tribunal to calculate the amount Lock is owed.

The case has implications for thousands of workers, with around 700 such cases being supported by UNISON. General secretary Dave Prentis said: "It's taken nearly five years to get here, but now all employees who earn commission will see that reflected in their holiday pay."

However, he cautioned that it is an employment right based on a European directive, something that could well disappear after Brexit. So he challenged the government to "prove it's on the side of ordinary workers by showing how it's going to protect all rights such as these".

www.unison.org.uk/news/press-release/2017/02/supreme-court-ends-british-gas-holiday-pay-challenge-says-unison/

Government fails on ethnicity review

An independent review has set out recommendations for employers in the public and private sectors to improve diversity within their organisations.

The review, led by Baroness McGregor-Smith, identified discrimination and bias at every stage of an individual's working life.

In 2015, one in eight of the working age population were from a BME background, yet BME individuals make up only 10% of the workforce and hold only 6% of top management positions;

According to the review, the employment rate for ethnic minorities is only 62.8% compared with an employment rate for white workers of 75.6% — a gap of over 12 percentage points. This gap is even worse for some ethnic groups, for instance the employment rate for those from a Pakistani or Bangladeshi background is only 54.9%.

The review found that if BME people progressed in the workplace at the same rate as their white counterparts, the UK economy could be boosted by £24 billion.

One of the review's recommendations was that employers should come clean about their lack of diversity by publishing a breakdown of their workforce by race and pay band. Outsourcing group Mitie, where McGregor-Smith was chief executive until late 2016, already publishes such data.

However, it would appear that the government hasn't learned from past mistakes. Even though it welcomed the report, it has ruled out legislation on providing an ethnicity breakdown and instead recommended a voluntary approach.

The last Conservative-Liberal Democrat coalition government followed the same voluntary approach to gender pay. And it failed so miserably that regulations on disclosing the gender pay gap in companies now come into effect at the start of April and for the public sector at the end of March.

TUC general secretary Frances O'Grady said: "Without government action, racist discrimination at work won't simply disappear. Ministers must act on the report's recommendations, including requiring companies with over 50 employees to publish data on race and pay.

"Racism and discrimination at work won't be eliminated by talk — it's time for business and the government to act."

www.gov.uk/government/uploads/system/uploads/attachment_data/file/594336/race-in-workplace-mcgregor-smith-review.pdf

Designed and printed by RAP Spiderweb Limited, Clowes Street, Hollinwood, Oldham OL9 7LY Telephone 0161 947 3700