

Update from our Employment Team: July 2010

## FROM 1 OCTOBER

### **Equality Act 2010**

- Extends the scope for employers to use positive discrimination to combat discrimination. This allows employers to recruit or promote someone from an under-represented group where they have a choice between two or more equally qualified candidates.
- Prohibits employers asking about the health or disability of a candidate subject to exceptions. If these exceptions do not apply, employers can only ask an employee to complete a health questionnaire on appointment.
- Increases pay transparency by making secrecy clauses unenforceable in certain circumstances.
- Harmonises the main provisions of the different types of discrimination law.
- Tribunals have the power to make recommendations that benefit the wider workforce, not just the claimant.

*NB: Further provisions of this act will be implemented in April 2011.*

### **What should employers do?**

- Need to ensure they can demonstrate a real commitment to equal opportunities not just by having in place a policy but also by showing that it is actively implemented, monitored and reviewed across all aspects of the employment relationship.
- Provide appropriate training to ensure employee and management awareness of the Equality Act 2010.

### INTERESTING CASE

#### **Limited 'special circumstances' in which an employer's notification of dismissal to an employee can be withdrawn**

- An employee's suspicion that the employer had made a mistake in sending her a letter of dismissal did not prevent the clear, unambiguous words of dismissal taking effect and so she could claim to be dismissed (Willoughby v CF Capital plc).
- Exception - unless there was something to indicate to the employee that these words could not be taken at face value.
- For a clearly expressed dismissal to be retracted it must be done quickly a reasonable period of time was described as 'relatively short, a day or two' (In Kwik-Fit (GB) Limited v Lineham).

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