

REVIEW



**Staff Wars – the
employer strikes back**



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Introduction

Welcome to our electronic news review published by M&P Legal. We hope that the publication is of interest to recipients. Please contact any of the individuals listed on the contact us page with comments for future articles.



Employment Lawyer John T Aycok takes a look at ...

... the rapidly changing labour law scene in the UK and assesses how this might affect the Isle of Man.

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The Manx Government's recent announcement that implementation of the Disability Discrimination Act 2006 of Tynwald will next be reviewed at the end of the year illustrates the Island's careful approach to introducing change to the local business law framework. This comes at a time when changes to employment law, in particular, in England and Wales are happening at a remarkably quick pace.

The British coalition government seems intent on shifting the balance back towards the employer having already lengthened the minimum service period required for employees to claim unfair dismissal and made proposals for mandatory conciliation periods, new style settlement agreements, filing fees for claimants and stringent new caps for unfair dismissal compensatory awards. The coalition is also keen to proceed with measures to encourage employee ownership of businesses in an effort to change the whole claimant culture and obtain employee buy-in. This "rights for shares" scheme was twice rejected by the House of Lords (latterly by 69 votes) but was in April finally passed by Parliament albeit with some concessions to protestors. The controversial "compensated no fault dismissal" remains in proposal form only despite pressing by the Institute of Directors for implementation into law.

Here in the Isle of Man, our labour law continues to be moulded carefully and conservatively to suit the needs of a much

smaller jurisdiction. The last major overhaul of local labour law was in 2006 when the Employment Act of that year consolidated the Island's employment law and introduced some significant new rights. Also in 2006 the Disability Discrimination Act 2006 ("the DDA") received royal assent but it has not yet been enlivened for the reasons set out by the government recently: principally this is because the government favours a phased approach involving multiple agencies. It should be remembered however that the DDA aims to set minimum levels of disabled access to buildings and outlaw discrimination against disabled people in the supply of goods and services, it does not provide for employment based disability discrimination. That issue is to be dealt with as part of an Equality Bill which is currently being prepared. Eventually I understand the intention is that the Equality Bill will deal with disability and other discrimination in both the employment arena and goods and services and will repeal all previous equality legislation. A single consolidating statute is therefore eventually likely to cover all areas of discrimination.

The Equality Bill is not however imminent and there is other local employment legislation in the pipeline ahead of it, for instance bills dealing with the control of employment and miscellaneous amendments to the Employment Act. Meantime, minority groups such as the disabled are not without present protection in the workplace because the Employment

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Act 2006 enshrines certain dismissal and detriment rights aimed at preventing unfair dismissal and/or treatment of all employees.

The Manx Government is keen to ensure the Island remains highly competitive and it therefore adopts a cautious approach in introducing employment law that might be seen to increase red tape for employers. It remains to be seen to what extent any of the current changes in England eventually make it on to our statute book. One significant English change the Isle of Man may show an interest in is the possibility of charging a filing fee for claimants at the Employment Tribunal. The spike in 2013 Isle of Man Employment Tribunal case numbers might prompt further consideration of this possibility in the corridors of Tynwald as a revenue-generating measure coupled with a deterrent to speculative claimants.

History shows, however, that there is wisdom in taking reasonable time to introduce new employment law to the Isle of Man. Sometimes such new measures elsewhere prove to be unworkable and have to be withdrawn or heavily revised. A good illustration of that was the ill-fated introduction in England and Wales of statutory grievance, dismissal and disciplinary procedures which caused confusion in practice and were ultimately repealed. In the Isle of Man the position remained throughout that the published code of practice on disciplinary and

grievance procedures provided a good model for employers but was not mandatory.

Because of its membership of the European Union, the UK is mandated to introduce certain EU driven employment law. The Transfer of Undertakings (Protection of Employment) Regulations (“TUPE”) represent one significant area where English law is markedly different from Isle of Man law in connection with the way contracts of employment can transfer when a business changes hands. The local position is a good deal simpler than English law which had to enact the Acquired Rights Directive from Brussels leading to some very complex legal situations on business acquisitions. Some of that law is now in the process of being watered down in England and Wales. This strikes a chord with the Institute of Directors’ plea to halt “over-zealous” implementation of EU directives in the UK. The Isle of Man scope of government review recommended in the March 2012 report that TUPE legislation should not be introduced here but government should instead seek to conclude commercial arrangements with future private or voluntary providers of public services to provide for the transfer of its existing public sector staff and protection as far as possible of existing terms of service.

The law rarely stands still and employment law in particular is sensitive to lifestyle and market changes which shape the way

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we work and the way we want to work. Watching the bedding in of the business orientated new measures in England and Wales will be an interesting and educational process from afar. Perhaps once the inevitable snagging and teething issues in the various new labour law changes have been resolved the Isle of Man Government may start to take a closer look at whether any of these measures might be suitable for a much smaller, non-EU jurisdiction.

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