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NEWS

Rentokil closes pension scheme

The decision by the pest-control firm Rentokil to close its final-salary pension scheme to current employees has sparked fears among unions that other under-pressure companies could soon follow suit.

The move is the first of its kind to have been made by a FTSE 100 company; as a result of the closure, more than 3,000 Rentokil employees will have their benefits frozen and will be prevented from further pension accruals.

A range of factors – including declining investment returns, increasing life expectancy and stringent pensions regulation – are thought to have contributed to the severe pensions pressures faced by many UK employers.

However, Brendan Barber, the general secretary of the Trades Union Congress (TUC), pointed out that Rentokil had already taken advantage of a five-year pensions 'holiday' to ease its costs, making no pensions contributions between 1999 and 2004.

"Only an anti-union company like Rentokil would be able to get away with taking a long pensions holiday, only ending last year, and then move immediately to close its pension scheme to existing members," commented Derek Simpson, the general secretary of the Amicus union.

Mr Barber warned that other firms were likely to follow the example set by Rentokil "if it appeared to get away with it".

In the wake of Rentokil's announcement of its decision, a number of other FTSE 100 firms moved swiftly to counter speculation that they would be the next to close their final-salary schemes.

Many companies have tried to control costs by closing final salary schemes to new employees in recent years.

About three quarters of all final-salary schemes in the private sector are now closed to new members, according to the Government Actuary's department.

Gas firm BG Group, Yell.com, advertising group WPP and caterer Compass were among the companies to insist that, although their pensions balances remain at a level similar to that reported by Rentokil, they had no plans for scheme closures.

"[Our scheme] is final-salary, it is open to newcomers, and there are no plans to change that," a BG Group spokesman said.

Compass – whose deficit increased from £426m to £530m in 2005 – said:

"Compass operates a final salary pension scheme in the UK. It is severely restricted to new entrants but there are no current plans to change it."

Later reports, however, indicated that Compass had in fact drawn up plans to reduce the benefits enjoyed by members of its final-salary scheme.

Another company, the Bradford-based lender Provident Financial, drew union fire for doubling the contributions the members of its pension scheme are required to pay: from April next year, the contributions will be increased from 7 per cent of salary to 14 per cent.

"It sounds like they don't want to keep the final salary scheme going," said a spokesman for the TUC.

"They are upping contributions to a very high proportion of your salary that most people won't be able to afford. It seems they are forcing members into an inferior pension scheme."

The Provident scheme currently has a £133m deficit.

The company said that a "more sustainable" cash-balance scheme would soon be available to employees who left the final-salary scheme.

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DTI publishes Work and Families Bill

Working families have received a welcome boost with the publication of the long-awaited Work and Families Bill, which aims to create a number of new employment rights and responsibilities for both employers and employees.

Trade and Industry Secretary Alan Johnson announced the publication of the Bill on October 19. New measures in the Bill include:

- **Statutory Maternity Pay and Maternity Allowance extended from six to nine months for babies born after April 2007, and to 12 months by the end of the current Parliament;**
- **new paternity leave to allow fathers to share leave and statutory pay with the mother if she opts to return to work after six months but before the end of her maternity leave period;**
- **the right to request flexible working for carers extended from April 2007;**
- **"keeping in touch" days to maintain a good link between employers and**

employees on maternity leave, allowing employers to have "reasonable contact" in order to plan for cover and return to work;

- **the period of notice for return from maternity leave extended to two months to allow employers to plan for return to work.**

Mr Johnson said: "Our consultation showed broad support for our family friendly approach, but the Bill also includes a number of measures to make it easier for businesses to deal with employees."

However, the Chartered Institute of Personnel and Development (CIPD) said that the measures would do little to change the current leave arrangements and added that the proposals are unlikely to lead to a significant early increase in the number of fathers taking paternity leave.

The CIPD said the suggestion that three months of paid maternity leave could be transferred from mothers to fathers, under specific circumstances, "could be

unnecessarily complex for employers to administer."

The Confederation of British Industry (CBI) urged the Government to give more support to employers if it intends to implement fully the measures laid out in the Bill.

CBI deputy director-general John Cridland said: "Businesses were willing to support the Government's plans to extend maternity and flexible working rights provided that the inevitable administrative burden was shared.

"But this announcement introduces an unexpected new right for fathers and leaves employers guessing as to whether they will be able to hand back to the Government the burden of administering maternity pay."

Further information

www.parliament.the-stationery-office.co.uk/pa/cm200506/cmbills/060/2006060.pdf

Disability discrimination

Government announces new rights for seriously ill workers

New rules will prevent employers from discriminating against workers with serious illnesses.

Changes to the Disability Discrimination Act, now in force, make it unlawful for employers to discriminate against employees with conditions such as cancer, HIV or multiple sclerosis who are yet to show signs of their illness.

At least 250,000 employees in the UK are expected to benefit from the new

legislation. Chairman of the Disability Rights Commission Bert Massie said that the changes closed "a significant loophole in the law".

"We have been unable to help people who have been diagnosed with serious illnesses and then treated unfairly, because they didn't fall under the legal definition of disability," he said. "This is plainly wrong. People diagnosed with serious long-term health conditions shouldn't be

discriminated against."

Anne McGuire, the minister for disabled people, said: "People with HIV, multiple sclerosis and cancer won't have to put up with discrimination effectively from the point of diagnosis," she added. "In addition, people with mental illness will avoid the unnecessary burden of being required to prove their condition is clinically well-recognised to get redress against discrimination."

Health schemes

New sickness-absence plan

The Department of Work and Pensions has launched a new campaign to encourage employers to develop occupational health schemes to reduce the number of sick days taken by staff. It also aims to promote a healthy working environment, reduce stress and provide reintegration schemes.

A new helpline for small firms will be available from February 2006 providing information and support on managing sickness absence; pilot studies will be carried out to make an economic case for enhanced occupational health schemes; and a national stakeholder council will be established to produce an action plan by Spring 2006.

Unfair dismissal

Taxman wins landmark victory

A landmark disability ruling won by a former taxman looks set to spark a series of similar claims.

Wallace Millar was sacked from the Inland Revenue in August 2002 after being on long-term sick leave following an accident at work four years earlier which left him with a drooping eyelid and photophobia, an aversion to bright lights.

After he lost his job, Mr Millar claimed unfair dismissal on the grounds of disability discrimination because he had impaired vision. But an employment tribunal found that Mr Millar was not disabled under the Disability Discrimination Act because his condition

was not physical or mental. However, his lawyers argued that, if the impairment was physical, whether it was caused by a physical or mental illness, then he was covered by the Disability Discrimination Act.

Now, in a historic judgement, the Court of Session has overturned the original ruling and said that a person can be disabled without there being a cause for it.

In his ruling, Lord Penrose pointed out that an amputee, for example, does not have an illness and that many forms of impairment result from conditions that can't be described as illnesses.

EOC reports on private-sector pay gap

Women working in the private sector receive 45 per cent less pay per hour than their male counterparts, according to research by the Equal Opportunities Commission (EOC).

The study found that the average hourly rate for male full-time workers is £13.75, while women working full-time receive £10.65 and female part-timers get £7.60.

Jenny Watson, the EOC chair, said that the gender pay gap was "unacceptable", as was the fact that ministers have no plans to legislate in

this area as they have done in the public sector. The EOC argues that private sector businesses should be compelled by law to check whether male and female employees receive the same wage for performing the same work and obliged to take action to remove any salary disparities.

It claims that action such as this is needed due to the slow progress made in closing the gender gap; on current trends it would take 40 years to have an equal number of male and female directors at FTSE 100 companies.

The EOC urged the Women at Work Commission to address the pay gap in an investigation of employment practices due to report in January.

It also urged the Government to introduce laws to force private sector employers to use diagnostic equality checks to identify pay gaps, in line with public sector duties to be introduced in 2007.

Further information

Copies of the EOC research can be found at: www.eoc.org.uk.

EU looks at employment and pension rights

EU ministers have once again failed to reach agreement on changes to the Working Time Directive, during a meeting which took place on December 8, 2005.

The failure comes in spite of the UK's proposed compromise on the opt-out clause, in which it agreed that the

provision should be "eventually made redundant".

The UK's proposal, which was also thought to include tougher measures to ensure that workers are not forced to sign contracts agreeing longer hours, was rejected by 15 out of 25 EU Member States.

The British Trade and Industry Secretary, Alan Johnson, who chaired the meeting, said: "We have made more progress today than we've ever made in debating this issue over a number of years, but we're not yet in a position to reach a political agreement."

Sex discrimination claim for Dresdner

Six female employees of the investment bank Dresdner Kleinwort Wasserstein have filed a £793m sexual discrimination lawsuit, believed to be the largest of its kind, claiming unfair and abusive treatment.

The women claim that females are denied

top jobs at Dresdner's London and New York offices, are paid less than their male colleagues and are forced to work in a hostile environment in which men boast of visits to strip clubs, bring prostitutes into the office and make sexual remarks to female co-workers. The suit said: "Although we live in 2006, the 'glass ceiling' is alive and well at this German investment bank, where women are treated as second-class citizens."

The suit notes that only 1 per cent of women in the capital markets division are managing directors, compared with 15 per cent of men. It says that the absence of women from senior positions contributes to a "pervasive discriminatory culture". The complainants document a number of incidents in which they were subjected to vulgar remarks, excluded from company functions to allow male staff to go on to strip clubs, and told that female juniors were hired to serve as "eye candy". Dresdner said that it will defend itself against the suit, and added that the firm "fully complies with all applicable employment-related laws and is confident that any claims to the contrary are without merit".

New rules on same-sex relationships rights

The conciliation body ACAS has reminded employers of important changes to the law on same-sex relationships.

The Civil Partnership Act (CPA), means that benefits such as survivor pensions, statutory paternity pay, paternity and adoption leave and health insurance enjoyed by married employees and their spouses must now be extended to employees in civil partnerships.

Although there are no legal obligations to offer such benefits to partners of either the same or opposite sex who have not entered into a marriage or civil partnership, where benefits are made available to unmarried heterosexual couples they must be extended to same-sex couples who have not registered a civil partnership.

Further information

www.acas.org.uk.

Data protection guidance for employee references

The Information Commissioner's Office has published a new guide for employers on how the Data Protection Act (DPA) applies to employee references.

The guide gives recommendations on good practice to help employers decide when employment references should be released. Exemptions may apply in cases where the reference contains confidential information.

Further information

Copies of the guidance can be obtained from www.ico.gov.uk

Q Our company sick pay (CSP) policy allows us to withhold CSP if an employee fails to follow the absence reporting procedure.

An employee has repeatedly failed to follow the reporting procedure, despite reminders from his manager in the past. Yet again he has failed to follow the reporting procedure part-way through an absence period, and we now are withholding further CSP from the date his last GP's certificate expired, but we will pay SSP. We have advised him of this by letter and phone.

We have always paid him in the past, despite him not following procedures on previous occasions.

There is only one other example of an employee who has failed to follow procedure, and she was paid – but her case differed because she had not got a long history of receiving previous clear advice from her manager that she must follow procedure.

Does he have redress against us for unlawful deduction from wages or any other such claim – and, if so, must he exhaust our internal grievance procedure first?

A Unfortunately, the answer to your question is not clear cut. The fact that your Company Sick Pay policy makes it quite clear that you can withhold Company Sick Pay for failure to follow the absence reporting procedure should mean that this individual would not be able to claim an unlawful deduction from wages.

However, because you have continued to pay him in the past, despite his failure to follow the procedure, and you have paid another individual in the same circumstances (albeit slightly different), he could argue that regardless of what the policy says, custom and practice dictates that he should be paid in full.

This argument depends on how often this has occurred and over what period of time.

As you have already advised him of the deduction the only thing you can do is wait and see if he raises a

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grievance on the issue.

I can confirm that he would have to exhaust this procedure before going externally.

Q An employee, who has suffered from non-work related stress in the past, physically and verbally attacked another member of staff.

We suspended the employee to investigate the incidents, and then wrote inviting the individual to a disciplinary hearing.

At this point, the employee sent in a sick note declaring stress-related illness. The employee has now been off work for over six months.

When the statutory sick pay quota ended we wrote to inform of this and invited the employee to contact us for any assistance required. We suggested that we could offer a return to work on a part-time basis, but we have received no response.

What would you advise we do now?

A If the employee is signed off by their doctor they should be dealt with by means of disciplinary procedure upon their return to work.

However the following approach would be advisable in such a situation:

If the employee continues to be signed off sick you could consider dealing with the issue on the grounds of 'capability'.

This would involve obtaining the employees permission to write to their doctor or alternatively referring them to an occupational health provider for independent assessment.

You should then be asking the following questions:

- **When is the employee likely to be returning to work?**
- **Are there any reasonable adjustments which can be made to the workplace to**

facilitate a return to work?

- **Any recommendations to facilitate a return to work via means of redeployment or reduced hours either on a temporary or permanent.**

You should then make arrangements to meet with the employee (allowing them to be accompanied by a fellow work colleague or trade union representative if they wish to do so) to discuss the options available with regard a return to work.

If the employee is not likely to be returning to work you could consider the dismissal of the employee with 'capability' being the fair reason.

If this is the decision being made you should ensure that the employee is allowed the provision of an appeal against the decision.

By doing so, you can demonstrate to an employment tribunal that you have exhausted procedure as well as demonstrating a fair reason for dismissal.

Q Where an employee has other employment for 25 hrs per week before taking up employment with ourselves on a 37 hour week basis and he intends to continue in both posts, have we any concerns under working time regulations?

A Given that you are already aware of the other employment it would be the responsibility of the second employer (i.e. yourselves) to ensure that he does not work for too many hours.

The alternative is to ask him to sign an opt-out agreement.

However, working 62 hours per week on a regular basis is not a good idea and you need to consider how well he is likely to perform his duties in these circumstances.

I think that it would be prudent to discuss the matter with him first and point out the pitfalls.

The best decision would probably be to employ him on a part-time basis so that he works part-time for both yourselves and the other employer.