

## This month A-Z focus - "C" - Consultation

The Government has consulted on plans for a culture of flexible, family-friendly employment practices. There are four elements - a system of flexible parental leave; a right for all employees to request flexible working; changes to the Working Time Regulations affecting the interaction of annual leave with sick leave and family-friendly leave; and measures to encourage equal pay for equal work between men and women.

We compiled a precis of the consultation document and sought your views on what we consider to be the key issues for local authorities as employers. Thank you very much to the colleagues who have sent us their comments. We have submitted a response on behalf of local authorities in the region. If you would like a copy of the response, please email [advice@seemp.co.uk](mailto:advice@seemp.co.uk).



## Other Information

### Public Sector Equality Duties delayed

These had not come into force in July 2011 as previously expected. It is expected that these issues will be debated in the House of Lords in September 2011. The specific duties will come into force following parliamentary approval. [Read more](#)

### Government's consultation on state pension reform received broad support

The consultation 'A State Pension for the 21st century' proposed two options for reforming the state pension for future pensioners. Over three-quarters of organisations who responded favoured the single tier option in principle. This option would raise the state pension to around £140 - above the level of the current means testing threshold and would significantly reduce the need for low income pensioners to apply for pension credit. [Read more](#)

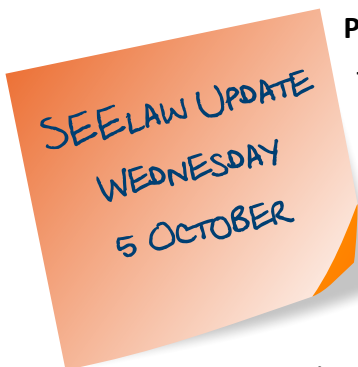
### Public sector workers bring more claims in EAT

According to a recent analysis by a commercial law firm, EMW, the number of employment appeals in the public sector is now considerably higher than five years ago, despite employing just 22% of UK workforce.

The lawyers said the number of claims could continue to rise in the next 12 months as the effect of spending cuts continue to bite.

"The public sector is already burdened by a disproportionately high number of employment claims and the problem could get worse as cost and efficiency savings are put in place," a principal in the employment team at the firm said. In addition, "the public sector is expected to start putting in place efficiency drives with performance targets that are likely to be tougher and monitored more rigorously. There is a risk that some employees who are not used to this could see this as a form of [bullying](#) while those who are made [redundant](#) could file for [unfair dismissal](#)."

This shows that, in order to manage changes in operation effectively and positively, it is important to ensure policies and procedures are up-to-date and followed correctly. Meaningful consultation must begin "in good time". Whether this is required by law or not, it is always good practice to keep the staff in the know!





## Case Law

### The conundrum of holidays and sick leave continues.....

KHS AG v Winifried Shulte

*EU opinion on holiday carry over of untaken annual leave*

The latest case of holiday and sickness absence brought before the European Court of Justice (CJEU) which could have an impact on the Government's future plan in this area. [Read more](#)

NHS Leeds v Larner UKEAT/0088/11/CEA

*Paid holiday for sick workers*

The EAT ruled that the employee had the right to have her leave entitlement carried over even without making a formal request. [Read more](#)

Autoclenz v Belcher

*Employee or self-employed and "sham clauses"?*

The Supreme Court held that reality trumped express contractual terms.

[Read more](#)

Ayodele v Compass Group [2011]  
UKEAT/0484/10/SM

*Request to continue working beyond retirement age*

The tribunal has held that a request to work beyond 65 must be dealt with by the employer in "good faith". [Read more](#)

### Dismissal, dismissal, dismissal

McBride v Falkirk Football & Athletic Club

*Constructive Dismissal - repudiatory breach of contract*

The EAT agreed that an "autocratic style of management" is the norm in football BUT rejected the argument that this could be an excuse to treat employees badly. The duty of trust and confidence is also a relevant factor. [Read more](#)

South Tyneside Council v Ward UKEAT/0358/10/RN

*Unfair dismissal and disability discrimination*

This case shows the need to consider reasonable adjustments for disabled employees and of the importance of following procedures to the letter, and this case is an interesting example which demonstrates that the courts and Tribunals will look at **all** relevant circumstances in their entirety. [Read more](#)

Symes v The Pepperbox Nursery Ltd ET/1400081/11

*"Some Other Substantial Reason" - potentially a fair reason for dismissal even though the employee had done nothing wrong*

There is not an exhaustive list of what might constitute grounds for some other substantial reason and each case turns on its own facts. This case suggests that it was fair to dismiss an employee whose husband was investigated for serious criminal charges. [Read more](#)

### Date for your diary

Discipline, Grievance and Capability  
Wednesday 21 September

Most people will agree that 'Discipline, Grievance and Capability' are probably the three most dreaded words even for experienced HR professionals. This **one day** session covers how to manage process and dismissals relating to discipline, grievance and capability and considers the role of **mediation**.

[Book onto this training](#)