

# Employment Law Update

**Alan Barker MSc, MCIPD**  
**Executive Officer**

# ERNLLCA

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## Areas to be summarised:

- Referral to the Being A Good Employer Guide
- Retirement age
- Dispute Resolution measures – costly if not adhered to
- TUPE and contracts from the Principal Authorities
- Agency Worker Regulations 2011: 1 October 2011
- Pension implications of Government policy

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## Councils are employers:

- Councils and councillors have to act lawfully
- That includes employment law
- So, what do councils and councillors need?

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## Being a Good Employer guide:

- Recruitment
- Employee rights and obligations
- Management
- Staff development
- Dispute resolution
- Ending the relationship

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## Being a Good Employer:

- This is a guide
- Talk to your county association
- Employment is a relationship – relationships survive if both sides are willing to listen to each other

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## Being a Good Employer:

- Getting this wrong can be expensive
- Have good processes in the first place
- Use them – no shortcuts
- What happens in the company you work for can be irrelevant
- The key word is “appropriate”

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# Being a Good Employer:

When things go wrong, it's not you who  
pays.....  
it's the community you represent!

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## Retirement:

- With effect of 1 April 2011, no compulsory retirement age except in certain circumstances
- There has to be a proportionate response to a legitimate aim!
- Likely examples – emergency services or where physical fitness is essential
- Case law will develop
- Retirement is a dismissal, there has to be a lawful reason

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## Retirement:

- Retirement will be at a time of an employee's choosing or by negotiation with the employer
- State pension not affected
- Retirement discussions should form part of the annual performance appraisal
- Badly handled, can lead to a discrimination claim
- No financial cap!

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## Retirement:

- An employer can reasonably expect to be informed of an employee's intentions
- Poor performance remains a disciplinary or even a capability issue
- Avoid direct questions – when do you plan to retire?
- Contractual agreement as to a retirement date is possible but unlikely to be legally enforceable

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## Retirement:

- Employees can only “sign away” their statutory employment rights where they have had personal legal advice e.g. a compromise agreement
- What happens if an employee gives the council written notice of retirement on a certain date and then wants to change his or her mind?
- Case law will inform future processes

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## Dispute Resolutions measures:

- Written and accessible grievance and disciplinary procedures are compulsory
- Must be adhered to
- Employment Tribunals or the courts will make awards if agreed processes are not followed – even in a case where a dismissal was warranted
- High profile case - Haringey

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## TUPE:

- Transfer of Undertakings and (Protection of Employment) Regulations 2006, amended 2009
- May apply where local councils take on service provision from the principal authorities
- Regulation 3(4) deals with public sector transfers
- Regulation 3(5) deals with transfers within public administration

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## TUPE:

- A PA transfers staff on NJC rates of pay
- The local councils does not pay its staff on NJC rates and is not bound by this condition???
- Observation of future collective agreements -  
Government may legislate

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## TUPE:

- Contract needed between Transferor and Transferee organisations
- Employee right to be advised of negotiations
- Limited transferee rights as to information about transferor employees
- Indemnification
- Open Services White Paper

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## TUPE:

- Employee automatically unfairly dismissed if the sole or principal reason for dismissal is a TUPE transfer or a reason connected with it

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## TUPE:

- An economic, technical or organisational (eto) reason exists which entails changes to the workforce
- Should not be taken to mean that such a dismissal is automatically fair – can be challenged
- Influenced by case law

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## TUPE:

- An economic, technical or organisational reason has to relate to the future conduct of the council
- So, a transferor cannot dismiss staff because the transferor asks for this
- *Hynd V Armstrong*

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## TUPE:

- Regulation 13 requires information about a transfer to be made available to employee representatives (TULRe(C) Act 1992, S188)
- Information and consultation obligations apply
- Becomes more critical the smaller the organisation

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## Agency Worker Regulations 2010:

- Come into force on 1 October 2011
- Agency workers not employees of the hirer
- After 12 weeks employment entitled to equal treatment to permanent employees –  
canteen; creche; transport; toilets/showers; staff room; mother/baby room; prayer room; food & drinks machines; car parking
- Must be informed of any vacancies

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## Agency Worker Regulations 2010:

- After 12 weeks employment entitled to be treated as an employee as regards: pay; paid leave; bonuses and vouchers; maternity rights to attend appointments and alternative work
- Not included is Occupational Sick Pay; Occupational Maternity, Paternity or Adoption Pay; occupational pensions; redundancy pay; notice pay; payment for time off for TU duties

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## Pensions:

- Ability to award gratuities likely to end in 2012
- Local councils can only make employer contributions Local Government Pension Scheme (LGPS)
- Pensions Act 2008 – rollout between 2012 & 2016
- Compulsory enrolment of staff in a pension scheme
- National Employment Savings Trust (NEST) to be set up

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## Pensions:

- DCLG view that the duty to enrol employees will apply to local councils in a pension scheme
- NEST likely to be an alternative pension approach that local councils can use
- Guidance will be issued when more is known

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Any questions?

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