

Forthcoming Seminar

Our next Employment Law seminar will provide invaluable advice and guidance to human resources managers in businesses and organisations of all sizes.

Entitled 'Recent Developments in Employment Law', it aims to bring those working in personnel up to speed with the latest changes in legislation.

Members of the Employment Law Group will also explain the implications these changes will have for employers.

The breakfast event - which like our previous seminars is expected to have wide appeal - takes place on 25 April in the Underwood Suite at Leicester Tigers Rugby Club.

It starts at 7.45am for 8am and will finish at around 9.30am.

About the Employment Law Group

Recent changes in employment legislation have had a wide impact on employers of all sizes and in all business areas, and the steady flow of legislation from Europe will continue to affect all businesses, however many people they employ.

you through the legal minefield that is today's employment law, and to find commercial and practical solutions to all your employment issues.

One of the biggest employment law departments in the East Midlands, the group acts for the full range of employers from plcs and multi-nationals to small owner manager businesses.

Harvey Ingram Owston's Employment Law Group has the experience and expertise to help



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EMPLOYMENT

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Modernising Annuities

The Government has finally published its consultation paper on annuity reform. While those who are compelled to purchase an annuity have eagerly awaited this paper, it does not include the radical options for which many had hoped. Although the paper is some 66 pages long, much of it is given over to background information and justifying the policy of compulsory annuitisation.

The paper devotes much space to explaining the principles underlying the requirement to purchase an annuity and emphasises the primary purpose of a pension scheme; to provide an income at retirement.

The tax privileges granted to approved pension schemes are conditional on this requirement being met. In contrast, arrangements from which capital may either be drawn at will or bequeathed are granted different, and normally less generous, tax privileges. The paper indicates that the Government has no intention of departing from these principles.

While an exception exists in respect of self administered occupational schemes with at least 12 members, where pensions may be paid directly from the scheme's resources, the paper confirms that other occupational pension schemes and all personal pension

schemes must secure members' benefits through the purchase of an annuity. Seventy five continues to be the age by which an annuity must be purchased.

Responses to the paper must be made by 5 April. It appears that such responses will form the only opportunity to try to persuade the Government to pursue a more radical approach in respect of annuities.

For further information on this issue, please contact Stephen Woolfe on 0116 2545454 or by e-mail on shw@hio.co.uk

Workers Set For Holiday Pay

In recent years, there has been a move towards extending employment protection rights beyond employees to greater numbers of 'workers'.

The term 'worker' is given a wide definition in the Working Time Regulations 1998, to include anyone who performs personal work or services for another party, providing that other party is not a client or customer of the individual. This definition will extend to many casual, freelance and self-employed workers.

In the recent case of Byrne Brothers (Formwork) Limited -v- Baird and Others the Employment Appeal Tribunal held that four self-employed carpenters who worked on assignments for a building contractor were workers for the purposes of the Working Time Regulations. This was because they worked under contracts to provide carpentry services personally and did not run their own individual business undertakings. As a result they were entitled to receive holiday pay from the contractor.

Although Tribunals will continue to examine carefully the facts of each individual case to determine the status of a worker, this decision has wide-ranging implications for the building industry and ancillary trades where sub-contract work is common.

For further advice on this issue, please contact Sean Moran or any member of the Employment Law Group.
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BRIEFS...BRIEFS...BRIEFS...

Employment Law Watch
In January 2002 we launched Harvey Ingram Owston's Employment Law Watch. The aim of this service is to provide up to date information by e-mail on changes in employment law that may affect you and your business.

If you have not received a copy of our Employment Law Watch please send an e-mail to ljb@hio.co.uk and we will add you to our e-mail database so that you receive future updates.

BRIEFS...BRIEFS...BRIEFS...

Parental Leave
Since 15 December 1999 parents of children born on or after that date have had the right to take parental leave.

With effect from 10 January 2002, this right has been extended to parents of a child born or adopted before 15 December 1999 and who was under five on or after that date. Parents must take their entitlement by 31 March 2005.

Employment Law Newsletter

The items contained in this newsletter have been prepared as a general guide. They are not a substitute for professional advice, which would necessarily have to take account of the particular circumstances. The information and opinions given are liable to change without notice. Neither HIO or its partners or employees make any representation regarding the completeness or accuracy thereof and they accept no responsibility for any loss or damage incurred as a result of any user acting or refraining from acting upon anything contained in this newsletter or upon omission therefrom.

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Employment Bill - Latest Progress

In our last newsletter, we advised you of some of the proposed changes to employment law contained in the Employment Bill. This Bill has now received its third reading in the House of Commons and has progressed to the House of Lords.

One of the changes in the proposed legislation announced by the Government is the right to request flexible working so that an employee will be able to apply to his or her employer for a change to their hours, times and/or place of work.

This right is only available if the proposed change is to enable the

employee to care for a child who is under the age of six (or eighteen in the case of a disabled child).

An employer may only refuse a request on certain grounds including for example the burden of additional costs, inability to recruit additional staff, the detrimental impact on quality and performance or the ability to meet customer demand.

If an employer refuses a request for any other reason or if its decision is based on incorrect facts, the employee can apply to the Employment Tribunal, which has the power to order the employer to reconsider the

request and/or make a compensatory award.

In common with other employment legislation, there is also protection for employees who are dismissed or subjected to any detriment for making a request.

We will keep you up to date in relation to the progress of the Employment Bill in future editions of this newsletter and in our e-mail updates.

For further advice please contact Lucy Bawden or any other member of the Employment Law Group on 0116 2545454 or e-mail at ljb@hio.co.uk

Trade Union Recognition

The Employment Relations Act 1999 introduced a method by which trade unions gained the right to require recognition and representation of employees in collective bargaining on pay, hours and holidays.

Essentially a trade union can gain recognition from the employer if the business employs at least 21 people and a proportion of the workforce wants the union to be recognised. To achieve this, the union must first ask the employer in writing to recognise it voluntarily. If the employer refuses, the union applies to the Central Arbitration Committee (CAC) for a declaration requiring the employer to recognise it for collective bargaining purposes.

The CAC will not accept an application unless the union can show that it has 10% membership of the bargaining unit and that the majority of the workers in the unit would be likely to favour recognition. If the union cannot show such support, the CAC will reject the application.

At the initial application the CAC may be asked to rule on various issues such as the level of union membership, the numbers likely to support recognition and the size of the bargaining unit.

If the application is accepted, the issue is usually then put to a ballot of the workers in the bargaining unit. If the majority of workers voting, and at least 40%

of those entitled to vote support recognition, then the CAC shall order that the union is recognised. The CAC can determine the arrangements for the ballot.

We have recently acted for employers in defeating an application to the CAC by a union. If a trade union is trying to recruit members from your workforce or if you receive an application for recognition which you wish to oppose, please contact us immediately so that we may assist you.

For further advice please contact John Simon or any other member of the Employment Law Group on 0116 2545454 or e-mail at jns@hio.co.uk

Increase In Compensation Levels Awarded By Tribunals

Following a recent Government announcement, the amount of compensation Tribunals can award has been increased.

In respect of dismissals on or after February 1 2002, the maximum weekly pay rate for calculating the basic award for unfair dismissal has risen from £240 to £250, while the maximum compensatory

award for unfair dismissal is up from £51,700 to £52,600.

For redundancies on or after February 1 2002, the maximum weekly wage for calculating statutory redundancy pay has also increased from £240 to £250.

Other changes include an increase in the minimum basic award for compensation -

from £3,300 to £3,400 - where dismissal is unfair for certain specified reasons.

For further advice please contact Lucy Bawden or any other member of the Employment Law Group on 0116 2545454 or e-mail at ljb@hio.co.uk

The Data Protection Act 1998

A Code of Practice has been developed to cover the Data Protection Act 1998 as it applies to employment issues.

Part 1 of the Code - Recruitment and Selection - has now been issued with three further parts covering Employment

Records, Monitoring at Work and Medical Information to be issued at monthly intervals over the following three months.

We intend to hold a seminar on the Code's practical implications once all four parts have been issued.

For further advice please contact Sean Moran or any other member of the Employment Law Group on 0116 2545454 or e-mail at spm@hio.co.uk

Changes To Disability Discrimination

During our recent seminar on disability discrimination, we outlined some important changes to the Disability Discrimination Act 1995. These are due to come into effect in October 2004 and include: -

- lowering the small employer's exemption from fifteen employees to two employees.
- introducing the right for employment tribunals to order reinstatement or re-engagement when an employee succeeds with a claim for disability

discrimination.

- removing the defence of justification where an employer fails to make reasonable adjustments.
- giving special protection to people with cancer and HIV.
- ensuring that people who are registered blind or partially sighted are deemed disabled.
- introducing training on disability issues and providing support as further examples of adjustment.

Other proposed changes in the field of discrimination include the implementation of legislation in relation to sexual orientation and religion by 2 December 2003 and age discrimination by 2006.

For further advice please contact Lucy Bawden or any other member of the Employment Law Group on 0116 2545454 or e-mail at ljb@hio.co.uk