



EMPLOYMENT

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

Employment Law Watch

For those of you who receive our Employment Law Watch, you may already be aware of some of the changes contained within this newsletter. If you do not receive a copy of our Employment Law Watch and you would like to do so, please e-mail Lucy Bawden at ljb@hio.co.uk.

Increase In Maternity Pay

With effect from 1 April 2002, statutory maternity pay has been increased to £75 per week. The Government proposes to make a further increase in statutory maternity pay in April 2003 to £100 per week or 90% of the employee's weekly wage, whichever is the lesser.

Employment Bill Update

The first half of the Employment Bill which covers a range of issues including enhanced rights of working parents, statutory rights for trade union representatives and dispute resolution is expected to receive Royal Assent later this summer. We will keep you up to date in relation to developments.

Equal Treatment For Employees On Fixed Term Contracts

The Government is required to implement the European Fixed Term Directive by 10 July 2002. It proposes to implement it in the form of the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations ("the Regulations").

The Regulations provide that you will not be able to treat employees who are employed on fixed term contracts less favourably than comparable permanent employees unless the reason for the treatment can be objectively justified.

For example, with effect from 10 July 2002, the Regulations will prevent you from paying less to employees on fixed term contracts than comparable employees on permanent contracts.

You will also be obliged to provide employees on fixed term contracts with opportunities to secure permanent employment and notify them of all vacancies that arise in your company.

The Regulations also provide that you will not be able to provide employees with successive fixed term contracts for periods in excess of four years.

If employees on fixed term contracts think that they have been treated less favourably they will have the right to apply to you for a written statement giving the reasons for any less favourable treatment. If employees are not satisfied with the response, they will be able to present a complaint of less favourable treatment to the Employment Tribunal.

If the Tribunal upholds the complaint, it will be able to make a declaration as to the rights of the employee, award compensation and/or recommend the employer to take specific action. There will be no cap on the compensation that can be awarded.

Employees employed on fixed term contracts will also have the right to bring claims of unfair dismissal or detrimental

treatment if they have been dismissed or suffer a detriment because they asserted their rights under the Regulations.

We therefore recommend you review your contracts of employment well before 10 July 2002 to ensure that employees on fixed term contracts are not treated less favourably than employees on permanent contracts.

The provisions that need to be reviewed include pay, bonuses and commission, contractual sick pay and maternity pay provisions, access to pensions, profit sharing and share option schemes, redundancy, health insurance, holiday entitlement and training.

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



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Forthcoming Seminar

Our next Employment Law seminar will focus on both the legal and personnel aspects of recruitment. Aimed at human resources managers, it will look at the issues facing companies and organisations of all sizes and in all sectors when recruiting staff.

The event will include presentations by members of the Employment Law Group as well as a talk by guest speaker Keith Fisher of Fisher Consulting. It takes place on Thursday 8 August in the Underwood Suite at Leicester Tigers Rugby Club. The seminar, which is expected to have wide appeal, starts at 7.45am for 8.00am 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 managed businesses.

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

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 nor 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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Lay Off And Short Time Working

Businesses often find themselves in situations where they anticipate a reduction in workload. If it is expected that this will be only temporary and that work will pick up in due course, making redundancies may not be appropriate.

Alternative options are to impose short time working or to lay off staff. It is important to note that in the absence of a specific provision in the employment contract permitting lay off or short time working, such action will be a breach of contract and give the employees affected the right to claim constructive dismissal.

A term permitting lay off or short time working will only be implied into a contract in very limited circumstances.

The employer must show that the procedure has been established by custom and practice and that the employee was informed of this at the time employment started.

Even if the employment contract does contain a provision for lay off/short time working, the employer must still act reasonably in imposing these terms. Failure to give appropriate warning or to consult properly with employees may lead to claims for unfair dismissal.

Whether or not there is a provision in the contract of employment, an employee who is given no work during his normal working hours on any day may be entitled to a minimum fall back payment, known as a guarantee payment.

Alternatively, an employee who is laid off or placed on short time work may also claim a redundancy payment providing he or she has been laid off or placed on short time for the necessary period and follows the complicated statutory procedure laid down by the Employment Rights Act 1996.

It may therefore be appropriate for employers whose business is seasonal or fluctuates to review existing employment contracts and procedures.

For further advice on this subject please contact Lucy Bawden on (0116) 2545454 or at ljb@shio.co.uk

Employers Warned To Take Care When Giving Employee References

Increasingly, employers have to be aware of the need to take care in giving references.

The case of Spring v Guardian Assurance Plc confirmed that a duty of care is owed to an employee when giving a reference. This duty was extended in a later case to a potential future employer as well although the reference does not have to be a full and complete report on the employee.

Many employers may therefore ask whether it is worth giving a reference at all. The following matters should however be borne in mind:

- Refusal to give a reference without prior consultation with an employee may be a breach of the duty of mutual trust and confidence in circumstances where an

employer would normally otherwise provide references.

- A refusal to give a reference for an employee who has previously brought a sex discrimination or equal pay claim may constitute sex discrimination, particularly where the employer generally does give references.
- In certain circumstances, the provision of a reference may be obligatory, for example in the financial services industry.

Another issue for employers to consider when providing a reference is whether they are obliged to supply a copy to the employee if requested. Confidential references given or to be given by an employer are exempt from the disclosure provisions of the Data Protection Act

1998. This exemption does not, however, apply to references received.

An employee can therefore insist that anyone who has received a reference from his or her employer (or former employer) must provide a copy of this reference as it contains personal data within the meaning of the Act.

Employers should therefore adopt a clear policy in relation to the provision of references and where it is necessary or appropriate to provide a reference, care should be taken in the drafting of the reference.

For further information on this issue, please contact Sean Moran on (0116) 2545454 or by email at spm@hio.co.uk

World Cup Wanderlust

Tackling workplace absence during World Cup 2002 is an issue for almost every employer as interest in the competition grows.

The main problem for employers will be staff just not turning up for work at all on match days due to games clashing with normal working hours because of time differences between Britain and the Far East.

Employees may cry off sick for the whole day rather than risk penalties for arriving late at work and obviously this will greatly affect their productivity.

It may therefore be a good idea for employers to take a pragmatic view and to operate a temporary flexi-time system to allow workers to arrive late for work - as long as the time is made up later in the day.

Strictly speaking, employees will be breaching their contracts of employment if they do not adhere to their normal

working hours and so the rules and duration of any flexi-time system should be made very clear to them. If employers do intend to enforce normal working hours during the World Cup, it might also be a good idea to make this clear to their work force, perhaps with a general warning or World Cup Policy being issued. Disciplinary action for lateness / absenteeism will then be carried out in the normal way.

However employers choose to deal with potential absenteeism, male and female staff should be treated in the same way in order to avoid allegations of sex discrimination and, bearing in mind the international nature of the tournament, employers should ensure that if staff of one nationality are allowed to watch their team play, staff of a different nationality should be afforded the same privilege. Further, patriotic fervour should not be allowed to evolve into racist comment or behaviour directed at other members of staff.

Whatever arrangements employers put in place during the World Cup, they should also give some thought to the safety implications of staff being stoked up on excitement and/or alcohol during the working day. Those operating machinery should be warned not to drink before doing so and those who drive as part of their job should also be reminded that alcohol and driving should not mix. Finally, managers should try to prevent staff from becoming over amorous towards their colleagues as a result of football passion as this may also give rise to sex discrimination claims later on.

For further advice please contact Oliver Bennett or any other member of the Employment Law Group on 0116 2545454 or email at ojb@hio.co.uk

Workers On Long Term Sick Leave Are Entitled To Take Paid Annual Leave

Until recently, it has been unclear as to whether or not employees are entitled to take and to be paid for annual leave when they are on long-term sick leave.

In the case of Kigass Aero Components - v- Brown, the EAT confirmed that employees are entitled to take paid annual leave under the Working Time Regulations, while they are absent from work due to sickness.

Therefore, even if an employee has been off sick for most of the year they can request and take paid annual leave.

Note, however, that this only applies in relation to the employee's entitlement to annual leave in accordance with the Working Time Regulations.

This case also means that on termination of employment, employees are entitled to be paid for unused accrued annual

leave, even if they have been absent from work due to illness for the majority of the year.

For further advice on this issue, please contact Lucy Bawden on 0116 2545454 or by e-mail at ljb@hio.co.uk