

COOLEHADDOCK

+employment law bulletin

Welcome

A quick reminder: the minimum annual leave entitlement for all employees increased to 4.8 weeks (equivalent to 24 days for those working 5 days per week) from 1st October. From 1st April 2009 this will increase by a further 0.8 weeks to 5.6 weeks (28 days for a 5 day working week). In addition, the national minimum wage increased for adults to £5.52 per hour.

As always, being proactive is better than being reactive. If you deal with fairly with employees, handle any grievances sensitively and treat everybody equally, you'll eliminate 90% of HR problems.

Facing up to Facebook

The TUC is urging employers to put in place policies that not only cover general use of email and the internet but also social networking sites such as Facebook, MySpace and Bebo.

Although employers are within their rights to put such sites off limits altogether, the TUC is suggesting a more pragmatic approach which would allow staff access during breaks within mutually agreed parameters.

The TUC is also warning employers not to be tempted to check out job applicants' profiles online: as only a minority will have such profiles, this could give some candidates an unfair advantage (or disadvantage) and breach the employer's recruitment equality policies.

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Health and safety advice

If you are planning to implement a total ban on employees using Facebook during working hours, it is important to get the procedure right to avoid claims of constructive dismissal. We'd be happy to help out – contact details are below.

Ageing workforce

Research by the Department for Work and Pensions on employer attitudes suggest that more age-friendly HR policies are emerging, especially around retention and flexible working.

The survey – published to mark the first anniversary of the Employment Equality (Age) Regulations 2006 taking effect – also shows that older workers are increasingly seen as an asset with most employers professing to be sympathetic to allowing staff to stay on beyond normal retirement age.

The evidence on recruitment was less encouraging and while most employers had measures in place to eliminate formal age discrimination, this did not appear to have resulted in more older workers being offered work.

Another survey – for Jobcentre Plus – found the main quality younger workers see older colleagues

contributing is experience while older workers were most impressed by younger colleagues' ability to learn quickly.

Dismissal investigations

The Employment Appeal Tribunal has ruled on several points arising from a conduct and capability investigation involving an employee accused of malingering. In particular, the employer is under no obligation to take a statement from whoever tips off the employer about the alleged malingering if medical or video evidence is subsequently relied on when dismissing.

Seek a report on malingering from a consultant; evidence from an occupational health physician is sufficient.

Stress at work

The law on contractual liability for stress at work has been clarified in a case involving an employee who developed depression after an allegation of sexual harassment was made against him.

The Court of Appeal held that an employer's policy requiring harassment complaints to be handled 'sensitively' was aspirational and did not form part of the contract of employment. It also held the employer had

not been negligent in informing the employee of its decision by leaving a letter on his desk as it was the letter's content – not the means of delivery – which was of importance.

Data protection help

The Information Commissioner's Office has recently updated its guidance on what constitutes 'personal data' under the Data Protection Act. The new guide, Determining What is Personal Data, includes examples how data relates to real people. The guide can be found at

http://www.ico.gov.uk/upload/documents/determining_what_is_personal_data/whatispersonaldata2.htm.

Updated guidance on what comprises a 'relevant filing system' will follow soon.

New religious hatred law

The Racial and Religious Hatred Act 2006 came into force on 1 October, inserting new sections into the Public Order Act 1986 and making it an offence to issue threats or make other intimidating statements likely to stir up hatred on religious grounds.

All religions now have the same protection – the courts had previously identified Jews and Sikhs as 'racial groups' and thus protected under race laws but those of

other faiths, including Muslims and Christians, were excluded.

Getting your act together

The Employment Appeal Tribunal has emphasized the importance of getting all the evidence together for employment tribunal hearings, stating that employers are generally not allowed a second attempt at defending claims, even with new evidence.

In the case in question, Hygia Professional Training v Cutter, an employee had been dismissed for allegedly trying to poach customers, but at the employment tribunal hearing the employers produced no real evidence and claimed they had not realised this was required.

After the tribunal decision, the employers produced four witness statements offering persuasive evidence that the ex-employee had, while still employed, been attempting to solicit work from clients.

The Employment Appeal Tribunal held, however, that the employer had failed to properly explain why such evidence could not have been produced at the initial hearing, adding that pleading ignorance or being in receipt of poor advice would not suffice.

And some snippets ...

Equality body takes over

The <http://www.equalityhumanrights.com/> Equality and Human Rights Commission took over the responsibilities of the Commission for Racial Equality, the Disability Rights Commission, and the Equal Opportunities Commission on 1 October 2007.

Health and safety advice

The Health and Safety Executive has two new sections on its website – one

<http://www.hse.gov.uk/disability/index.htm>

promoting good practice in workplace disability equality and health and safety risk assessment, and the second focusing on

<http://www.hse.gov.uk/fallsfromvehicles/index.htm>

falls from vehicles during loading and unloading.

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This newsletter is a guideline only to recent changes in employment law. You are advised to seek Legal Advice from our Employment Group on any specific queries you may have.