

# **Employment Law Briefing**

## *May 2008*

Hart Brown's Employment team seeks to provide a bi-monthly synopsis of key developments in recent employment law, which may affect you and your business.

### **Employ 50 or more employees?**

Since last month if you employ 50 or more employees your employees have the right to request you to inform and consult with them about key business, employment and restructuring issues. This comes as a result of the widening of the scope of the Information and Consultation of Employees Regulations 2004.

An employer's obligations under the regulations are not however automatic and will only be triggered once a valid request is made by at least 10% and at least 15 employees.

If the regulations apply to you and you receive a valid request from your employees, you will have to negotiate a formalised information and consultation agreement within a specified time frame. If an agreement is not reached within that time frame, you will have to comply with the standard information and consultation provisions. Most smaller employers consider these as unduly onerous.

If you do not comply with your obligations under the regulations the Employment Appeals Tribunals can impose a maximum penalty of £75,000.

If you dismiss an employee for trying to exercise their rights under the regulations the dismissal will be automatically unfair.



### **What this means for you**

If you employ 50 or more employees, we advise you to assess the risk of your employees making a request under the regulations.

If you assess the risk as high, you may wish to be pro-active and put a voluntary arrangement in place before a formal request is made to avoid having to comply with the standard provisions under the regulations.

If you consider the risk as low, you may decide to do nothing different to your normal practices and wait and see whether a request is made. Voluntarily implementing a formalised arrangement could be a waste of time if there is no driving force from your staff.

Whatever strategy you chose to adopt, you should not ignore a request as once it has been made it may trigger obligations under the regulations which you then have to comply with or risk a hefty fine.

## **Employ foreign nationals?**

The law in respect of the way foreign workers can come to work or study in the UK is currently undergoing radical change.

The basic rule is that non-British citizens are not allowed to work in the UK, unless there is a specific law or rule allowing them. There is a law which allows people from the European Economic Area (“EEA”) to work in the UK without a work permit. However, people from non-EEA countries need a work permit to work in the UK. The work permit system is however due to be abolished by the end of the year in favour of an Australian style points based system which is being phased in since 29 February 2008.

On 29 February 2008 new civil and criminal penalties were also introduced. If you unknowingly employ an illegal worker and do not make appropriate document checks you may face a fine of up to £10,000 per employee. It is also a criminal offence if you employ a worker who you know is not legally entitled to work in the UK punishable by an unlimited fine and/or a prison sentence of up to two years.



You will have a statutory excuse in civil proceedings if you check a prospective worker’s entitlement to work in the UK by checking and examining specified documents before they start work.

## **What this means for you**

To protect yourself and gain the protection of the statutory excuse from civil liability you should require all prospective workers to present specified documents proving their entitlement to work in the UK before they start work. You must examine and retain copies of the documents, ensure that photographs, dates of birth and names are consistent and that the documents appear to be genuine. This procedure should be carried out on all potential workers to avoid successful claims of race discrimination.

If a person has a time limit on their stay in the UK, to retain protection of the statutory excuse you must check their documents at least every 12 months to ensure they remain valid or until there are no restrictions on them working in the UK.

You will not have an excuse from civil liability if you knowingly employ an illegal worker, regardless of any document checks you make. You will also have committed a criminal offence.

If you require further advice on how to carry out the document checks please contact us for further information.

### **Dispute resolution – the ongoing problem**

Last week ACAS launched a public consultation on its revised draft Code of Practice on discipline and grievance. The revised Code of Practice comes as a result of the Employment Bill which is currently working its way through Parliament which plans to scrap the current compulsory “3 step” statutory dispute resolution procedures in favour of a more flexible and less prescriptive framework.



The new plans will require employers and employees to comply with the Code of Practice and if either party unreasonably fails to do so, the Employment Tribunals will be able to increase or reduce compensation by up to 25 per cent, depending on who was at fault.

### **What this means for you**

The Employment Bill and the new ACAS Code of Practice are expected to come into force in April 2009. Until then you will still be required to comply with the statutory

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dispute resolution procedures when dealing with discipline and grievances in the workplace where they are applicable.

If you dismiss an employee without following the statutory procedures the dismissal is likely to be automatically unfair. Furthermore, failure to comply with either of the statutory dispute resolution procedures where they apply can lead to an Employment Tribunal awarding an uplift on compensation awarded to an employee by between 10 – 50%.

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*This bulletin is for general guidance purposes only. Employment law is an extremely complicated area of law and appropriate advice should be sought before any course of action is pursued.*