



EMPLOYMENT LAW NEWSLETTER

01/12/2009



Another statutory right for employees?

April 2010 will see the phasing in of the right to request time off to undertake “relevant training”, modelled on the right to request flexible working. For employers with 250+ employees the new right comes into force in April 2010; employers with fewer staff won’t be affected until April 2011. To be eligible an employee must have been continuously employed for 26 weeks and, as with flexible working, only one request can be made in any twelve-month period. “Relevant training” is training which leads to an accredited qualification or develops a specific skill needed for a role.

As an employer you will be obliged to give serious consideration to any request that you receive, but a request can be refused where there is a good business reason for doing so.

On a brighter note as an employer you are under no obligation to meet the salary or training costs to enable a request for time off to train to be met – this is the responsibility of the employee and may prove to be a powerful deterrent.

For more information on Employment Law please call 0800 612 6120



Delay in introducing the Agency Workers Directive

Following speculation that the Government intended to introduce the European Agency Workers Directive as soon as April 2010, the Government have now announced that this will not take place before October 2011. Under the Directive agency workers are granted equal treatment in relation to pay, holiday, working hours, rest periods and training as permanent employees after only 12 weeks on assignment. This could have a massive financial impact on businesses which frequently use agency staff as part of their work force. We will keep you posted.

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Employee, Worker or Self Employed? – That is the question

In Autoclenz Ltd v Belcher & ors [2009] EWCA Civ 1046 the Court of Appeal considered the important issues surrounding the determination of whether an individual is an employee, worker or self-employed contractor.

The Claimants were car valeters engaged by Autoclenz. Each had signed a document stating they were self employed and not employees of Autoclenz. They were responsible for their own tax and National insurance and this was held by the Inland Revenue to be consistent with self-employment for the purposes of income tax. In 2007 Autoclenz required the Claimants to sign a new document stating they were not obliged to provide their personal services (the “substitution” clause), that Autoclenz were not under an obligation to engage their services nor the valeters to accept work (the “mutuality” clause). If they did not sign the document, they would not be given any work.

In November 2007 the Claimants submitted a claim in the Employment Tribunal under the Working Time Regulations 1998 and National Minimum Wage Regulations 1999. They claimed to be workers and as such were entitled to various rights including holiday pay and unpaid wages. The case went to the Court of Appeal who confirmed that the Claimants were indeed “workers” and as such succeeded in their claims.

This case highlights that the contractual documentation is only the starting point when considering the true relationship between the parties. Where there is disagreement, the Tribunal will look at the legal obligations placed on the parties and whether the parties ever realistically intended or envisaged that the written terms be carried out. The car valeters in this case were expected to turn up for work and do the work themselves. It was clear from the facts that no one really expected them to provide substitutes. As such they were classed as workers.



Festive fun or is it?

It has been a difficult year financially for everyone particularly small businesses. So to show a bit of Christmas spirit you think you will reward your employees with a “Works’ Christmas Bash”. But make sure it’s only the food bill you pick up and not the cost of facing an Employment Tribunal in the New Year.

What may be seen by many as a bit of harmless festive fun can be seen by others as unwanted sexual advances or offensive comments. As an employer you are vicariously liable for the actions of your employees during the course of their employment. This includes the proverbial office Christmas party even when the party takes place away from the office. Claims for sexual harassment and discrimination claims are a big risk at this time of year as is the fact the Tribunal can award unlimited compensation in these types of cases.

“It is therefore vital for the written contract between the parties to reflect the true business relationship. Failure to do so could render the existence of an employment or worker relationship, leaving you open to retrospective claims for such rights as holiday pay, deduction from wages etc. If you are in any doubt please contact a member of the IngramsProtect team.”

**Gillian Markland,
Head of
Employment**

“When writing to members of staff informing them of the Christmas party remind them that it is a work related party and as such they should conduct themselves appropriately.”

**Lorna Pratt,
Legal Executive**

If you are affected by any of the above situations or if you would like to discuss any employment law problem affecting you or your business, please contact either Gillian Markland or Lorna Pratt on

01904 520600

**Expanding your business?
Buying new premises?
Entering into a new business lease?**

**Please contact Elaine Copley in our Property Department on:
01904 520600.**

Merry Christmas and a Prosperous New Year!!

From the IngramsProtect team



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