

EMPLOYMENT ADVICE UPDATE SEPTEMBER 2011

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Agency Workers Regulations

On October 1 The Agency Worker Regulations 2010 come into force. These regulations seek to extend the rights of other workers to staff who are engaged through an agency.

The regulations include

- agency workers will be entitled to equal treatment as permanent staff in relation to basic working and employment conditions including pay and holidays.
- Agency workers rights to pay will apply to both hourly rate and to bonuses relating to personal performance
- The rights do not extend to some wider benefits such as sick pay and occupational pensions
- There are penalties for employers seeking to avoid implementing equal treatment

Detailed guidance can be found on

<http://www.bis.gov.uk/assets/biscore/employment-matters/docs/a/11-949-agency-workers-regulations-guidance>

Bribery Act

Guidance on the Bribery Act together with model templates and guidance for amendments to contracts of employment can be found on

http://www.nyyforum.org.uk/index.php/employment_advice_downloads.html



Equality Issues

Equal Pay

A landmark case for equal pay occurred in City of Hackney Teaching Primary Care Trust v Emanuel where the tribunal ruled that having separate processes for pay bargaining cannot justify pay variations, This occurred where the pay structures for nurses and maintenance workers were determined by two different bodies. The court found that the pay differences could not be justified by market forces or by different pay bargaining structures.

Religion and Belief Discrimination

The EHRC is currently undertaking a consultation of religion and belief discrimination and has appealed to the European Court of Human Rights in respect of 4 recent cases. This consultation can be found on

http://www.equalityhumanrights.com/uploaded_files/legal/ecthr_consultation_11_aug_11.doc

Sexual Harassment and Discrimination

In a recent case Smith v PerTemps, the court found that accusations of sexual discrimination, harassment and victimisation against the Chairman of PerTemps, were without foundation and were a 'waste of time'. Debbie Smith, a former executive was ordered to pay £100,000 towards the cost of the case. This demonstrates that courts will fine vexatious employees

Are your policies and procedures up to date in respect of the Equality Act? Contact the Employment Advice Service for guidance and an audit on policies and procedures.

Health and Safety

Recent Cases

Two recent cases are of note, both of which resulted in significant fines. One is where a company failed to provide hot water for employees to wash their hands and it was inadequate protection. Details of this can be found at

<http://www.hse.gov.uk/press/2011/coi-sw-mikewye.htm>

The other was where the toilet facilities for workers was considered to be unhygienic and unacceptable. The company was fined £12000 .



New occupational health advice line

The government is piloting a new Health for Work Advice line for organisations with less than 250 staff.

The service provides free, quick and easy access to effective professional advice and guidance in areas of employee well-being.

The helpline is available during office hours on 0800 0 77 88 44.

For more information, visit

www.workingforhealth.gov.uk/Initiatives/OccupationalHealth/Default.aspx

Voluntary Organisations

The Health and Safety Executive has guidance for voluntary organisations which can be found on <http://www.hse.gov.uk/voluntary/index.htm>

National Minimum Wage

The National Minimum Wage rates increase from 1 October 2011. They will be

Workers aged 16-17	£3.68 per hour
Workers aged 18-20	£4.98 per hour
Workers aged 21 and over	£6.08 per hour

Apprentices under 19 or 19 or over and in the first year of their apprenticeship will increase to £2.60 per hour



Terms and Conditions

Carrying over leave

Generally there is no statutory right to carry leave over. However, an employer *may* allow a worker to carry over any untaken holiday over the statutory minimum entitlement, of 4 weeks, from one leave year to the next. As the statutory entitlement in the UK is 5.6 weeks this gives employers and employees the opportunity to reach an agreement over the additional 1.6 weeks. Any agreement should be set out in the contract of employment or a workforce agreement..

In cases of long term absence, there are provisions for the carry over of accumulated holiday entitlement. This entitlement is currently being reviewed in the European courts,

This is a complex area and you may wish to contact the Employment Advice Service for further advice.

Date for your Diary

The next Yorkshire Employment Conference will be held on the 5th March in York Watch out for further details

Further Employment Advice

For further advice contact the Employment Advice Service at
employment.advice@nyyforum.org.uk

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