

Gravitate HR: HR and Legal Update

Spring 2010

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Introduction

Welcome to the 6th edition of Gravitate HR's quarterly newsletter, our Spring 2010 edition. Each edition will detail up and coming legal changes, implications for your organisation, and Gravitate HR case studies.

Forthcoming Legal Timetable

The following details some **key** legal updates for employers to recognize:

Early 2010: Under the Employment Relations Act 1999 the blacklisting of workers from employment as a result of their union membership or activities will be prevented.

April 2010: Extension of paternity leave and pay will mean fathers will be able to benefit from up to 26 weeks' additional paternity leave if the mother of the child returns to work before the end of the maternity leave period to which she is entitled. The new law, under the Work and Families Act, will come into effect for parents with babies due from April 3, 2011. Maternity and adoption pay increases to £124.88 per week from April 2010

April 2010: Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) Amendment Regulations 2010 will come into force, replacing the current 'sick note' with the new 'fit note' system. This will change the format of the medical statement to allow doctors to record whether a patient is fit to work or not, and will include a new provision allowing doctors to assess the fitness of a patient to carry out some duties. Please see our special edition Fit Note flyer!

April 2010: The Apprenticeships, Skills, Children and Learning Act 2009 will give employees the right to request time off for training, meaning employers will be obliged to consider requests for training they receive from an employee. However, employers will not be obliged to meet the salary or training costs to meet a request for time off for training and can refuse a request where there is a good business reason for doing so.

The Government intends to introduce this right into organisations with 250 or more employees in April 2010, extending this to cover all employees from April 2011 at the earliest.

April 2010: The terms of the Pension Act 2007 will mean the number of years' contribution required to achieve a full basic state pension is reduced to 30 years for both men and women.

Date to be confirmed: As part of the Work and Families Act the government intends to extend paid maternity leave to 12 months, which will follow on from the April 2007 extension to nine months.



Social Media at Work

Social media has its good and bad points - employers need to be aware of these and be prepared to put policies in place, even for personal networking sites!

I recently attended a networking seminar on social media, and it really got me thinking about the use of social media and networking sites at work. I have researched into this and found that there are a number of points to consider.

With the increased use of social media at work, whilst it can draw a number of benefits, marketing and branding for one, there is the potential for time wasting during work time, and the risk of users, (i.e. your employees) damaging the organisations reputation. Employees will likely to have their own personal social media sites including facebook and MySpace. There are also 'professional' mediums of social media including LinkedIn and Twitter is increasingly being used in the workplace for branding and networking. Despite the risks, organisations are advised not to ban use of social media at work altogether as this could be counterproductive to any marketing or business strategy, but to protect the interests and reputation of the organisation by applying clear guidelines and disciplinary sanctions for a breach of policy.



Recent CIPD research showed that 64% of HR managers felt it was appropriate to search the web for information on a person before recruiting them. Social Media profiles can be useful for recruiters when interviewing as often their facebook, twitter or linked in accounts can show a side of them that formal interviews cannot portray. However, use with caution!

It would be advisable, as businesses continue to use social media at work, to include specific guidelines on any company twitter or blogging sites that you use. For example access, passwords and frequency of use. If you would like further information how to manage this please get in touch - Heather

Summer Holiday Resources/Holiday Case law

In this interesting case, we look at the legalities of enforcing leave on an employee and whether holidays can be lost at the end of the year. The old "use or lose" scenario appeared to stand up in court, a different approach from the recent case where holidays continue to accrue during long periods of absence, even over two different holiday years. This case raises important points to employees who fail to request holidays and expect those to be accommodated towards the end of the holiday year. Whilst we would always encourage employers to permit holidays, where possible, this case highlights the right to reject a holiday on that basis.

In this case, the EAT had to consider when an individual might lose an **entitlement to paid holidays in Lyons v Mitie Security**. They held that the right to statutory leave is not absolute. Statutory or contractual notice requirements could operate so as to result in a loss of the right at the end of the year in respect to leave not taken, ie use or lose. The EAT asked whether an employer is legally obliged to permit an employee to take all of his paid leave within the leave year, even if the leave is requested towards the end of the leave year when it may not fit with organisational needs. The right to leave is subject to notice provisions so loss of leave at the end of a leave year could follow.



Immigration Seminar Update

Being in our line of work, we do come across immigration issues regularly and therefore last month I attended an Immigration conference hosted by Davidson Morris and the Border Agency in order to find out more about the small print of these sanctions and what it could mean for our clients and other small to medium UK businesses.

There were some key issues that stood out involving the effects of immigration rules on diversity, the employment relationship and ways to mitigate the risks for employers.

Within the theme of equality, it is also important for employers to understand their responsibility when it comes to potentially discriminating someone for requiring a sponsored permit. For example, if someone were employed on a post-study work visa, they accrued over one year's continuous service and this expired – the employer would have a responsibility to sponsor that employee.

An interesting point when assessing sponsor responsibility is the instance when an agency worker who is a migrant is taken on by a company. It must be ascertained that the sponsor themselves have full control of the migrants duties, functions, outcomes and salary – which is occasionally difficult to prove given the nature of an agency worker. The best advice is to ensure you have a tangible, clearly set out agreement with the agency in terms of which party decides the elements previously described.

With employers being threatened by criminal liability for the checks required to ensure their workers are legally working in the UK, the focus comes back to managing this risk. One way to do this is to incorporate wording into offer letters and contracts to the effect of 'offers subject to availability of necessary immigration requirements' and to include in your handbook that the employee should advise of any changes in immigration status and personal details.

For a full version of this article, please refer to our blog on our website.

Jennifer

Gravitate HR News!

We are currently in the process of designing our new website which is due to be live in April 2010 so look out for our new site when it goes live.

Congratulations to Jennifer who has been accepted to study part time for her MSc in Human Resource Management at Edinburgh Napier starting in September 2010. She will obtain CIPD accreditation on completion of the course.

Elaine Burns will be joining us in May as our new HR Assistant. She is currently completing her Msc and CIPD at Napier University and found us through our blog and newsletter updates! We wish Elaine good luck in her exams and look forward to her joining the team.

Over the next few months, we will all be preparing for our runs, walks and other charity events! Heather and Margery are stepping up from the usual 5k and including a 26.2 midnight walk! Jennifer and Sarah are due to sign up for the 5k and 10k, hoping to beat last years' time! And we are still trying to persuade Becky to run the 10k again – she did amazing last time!

