

Gravitate HR: HR and Legal Update

March 2009

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Introduction

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

In this edition, the focus is on impending changes to the law of discipline & grievance. Although we anticipate that there will be no significant changes to any policies or procedures as such, it is imperative that the new ACAS code of practice is adhered to.

Forthcoming Legal Timetable

Here's an at a glance overview of legal obligations for the next few months...all with implications for your organisation.

The following details some **key** legal updates for employers to recognise.

Spring 2009

New points-based immigration system: tier four implemented

1st April 2009

Statutory holiday entitlement is increasing to 28 days per annum (5.6 weeks)

5th April 2009

A weeks pay for statutory maternity, paternity and adoption are increasing to £123.06

5th April 2009

Repeal of statutory dispute resolution regulations

6th April 2009

Statutory sick pay is increasing to £79.15

6th April 2009

The right to request flexible working is extended to parents with children up to 16 years of age

Please see page 4 for more details and analysis of recent case law that Becky has been looking at.

Disciplinary & Grievance

Statutory sick pay is increasing to £79.15

In our last edition, we told you about the changes pending for the disciplinary & grievance law. ACAS have published a guidance booklet on the provisions, and the policies that we have previously developed are consistent and remain compliant with the current and the future law.

The impending changes will be the law and it remains for this to be tested through the courts. At this stage our advice is:

- + Maintain a reasonable approach at all times throughout the process. This is the key thing that will be taken into consideration by the tribunal and may affect compensation reward.
- + The same principles apply of allowing an investigation into the matter, accompany to the meeting, giving reasonable written notice, the right of appeal
- +The need for dealing with issues promptly and not delay meetings, decisions or confirmation of those decisions

All current monthly support clients as part of our service we will update this for you and send it to you in due course. Please call your HR Consultant if you have any further questions on this.

Substance Misuse

We have recently researched, drafted, consulted on and implemented a Substance Misuse Policy for a client of ours.

It has really highlighted to us the importance of having this provision at work, and that this is not just specific to safety critical industries.

Let's think about what would happen if one of your office staff turned up to work under the influence of alcohol or drugs (illegal substances);

- They could make a mistake in a critical document that ends up costing the business thousands
- They drive to a client meeting and get caught drink driving
- This voids your indemnity insurance as they were over the limit
- Your business's reputation is at stake!!!



If you would like us to draft a substance misuse policy suitable for your business, please get in contact with your HR Consultant.

Performance Management Framework – Not for Profit

We have been working closely with one of our clients in the Not for Profit sector to develop and implement a performance management framework.

Key elements included linking it to the organisation's strategy, to allow business plans and objectives to flow down at organizational, team and individual levels.

Competency frameworks were developed to provide a clear understanding of skills and knowledge required within roles to build upon the organisation's success in the future.

Both staff and management were consulted as part of the process and the framework has now been launched. In addition, the principles set out in the Framework form part of a holistic approach that follows through an employee's life cycle from recruitment through all stages of their employment.

We will review this process soon through staff focus groups.

Performance Factors	Poor	Good	Excellent
Quality of Work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Quantity of Work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dependability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Communication Skills	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Supervision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leadership Skills	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Initiative	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Race for Life 2009

Last year Heather, Margery and Sarah all took part in the Cancer Research Race for Life! Following on from our success Heather, Margery, Sarah & Jennifer have signed up for 2009 – Stirling, Hoptoun House and Arthur's seat respectively. Thank you for all your sponsors so far.....and for those who have yet to sponsor us the links are;

<http://www.raceforlifesponsorme.org/margerymcbain> <http://www.raceforlifesponsorme.org/heathermccaig>

<http://www.raceforlifesponsorme.org/sarahrogerson1> <http://www.raceforlifesponsorme.org/jensnedden>

Also, watch out for Becky running 10k this summer. She is running the Bupa 10k run Edinburgh

<http://www.greatrun.org/events/Event.aspx?id=3>

Easter 2009

We would like to wish you all a very happy Easter and hope you get the chance for some spring sunshine and chocolate. We have decided to close the office over Easter so please do be in touch either before Good Friday or after Easter Monday if you need to get in touch.

Recent Employment Case Law

We are always keeping up to date with case law and have outlined below some recent cases where the decisions and implications may have an impact on your business.

Long-term sickness and accrued annual holidays

The Working Time Regulations 1998 provide that employees can accrue statutory annual holiday entitlement while on long term sick leave. Unless otherwise stipulated by the Company, annual leave is lost and cannot be carried over, nor paid for in lieu, if the sick leave runs into the following holiday year.

Recently, the European Court of Justice has ruled that an employee may exercise his right to annual leave during another period if required.

Implications – this ruling has yet to be enforced in the UK yet we usually advise you to do this. We will keep you posted on this decision!

Disability Discrimination and reasonable adjustments

In the Disability Discrimination Act 1995, employers are required to make reasonable adjustments for employees or prospective employees who have a disability. However, the DDA recognises that employers cannot be expected to make reasonable adjustments if they *did not know, or could not reasonably be expected to know* an employee or prospective employee has a disability.

Implications - This is not a buy-out clause but a reminder for employers to take care when applying procedures, including recruitment, promotion, redundancy etc. It is important that employers follow fair, clear and consistent procedures, and reviews of such procedures are carried out regularly to ensure compliance with legislation and best practice. Examples may include request for medical records and involving occupational health.

'Discretionary bonuses' and contractual rights

In recent climates there may be a need to cut outgoing business costs and a key consideration may be cutting 'discretionary bonuses'. Recent case law has demonstrated that despite the use of the word 'discretionary', it may not mean that a bonus arrangement does not have a contractual status. Contractual terms can either be express or implied through custom and practice, and the word discretionary in the context of bonus schemes can relate to a number of factors, including the decision to pay the bonus, how to calculate it or the amount, as well as the length of time such bonuses have been continued to be paid.

Implications - Bonus schemes often contain discretionary elements while being contractually enforceable. In such circumstances, the employer must exercise any discretion rationally and in good faith. This need not mean a bonus must be paid, but the decision must be considered carefully to avoid a successful challenge. This can also be applied to Company policies and procedures (including custom and practice) and considerations to such should be taken with care.

All contents are for information purposes only and are not intended to be legal advice. If you are experiencing an issue that is covered in this case law and would like advice please contact a member of the Gravitate team.