

NEWS

EMPLOYMENT

Hotter than July? If that is possible, then we hope you manage to enjoy the late summer sun on holiday. If you have used up your holiday entitlement, the Government's plans to increase annual leave (reported below) will come as good news to you! We also report on the landmark House of Lords decision that has made all employers "hot under the collar" and we outline a cool-headed approach to preparing for the new age laws.

IN A FIX

From 10 July 2006 any employee who has been on a fixed-term contract (or a series of fixed-term contracts) for four years (in other words, since 10 July 2002) becomes a permanent employee. Employees who are already on a second or subsequent fixed-term contract will automatically become permanent when they reach four years' service. Employees who are on their first fixed-term contract will become permanent on the date the contract is renewed or when they reach four years' service, whichever is the later.

We are frequently asked whether there is any point in using fixed term contracts. We think that they are still useful for covering short term projects or absences of less than a year. It is also possible for you to justify the use of longer or successive fixed term contracts and in so doing, to avoid the automatic conversion into a permanent contract on its renewal or extension. There is no UK case law yet on the point, but with preparations for the 2012 Olympics already underway, it is conceivable that a fixed term contract in excess of four years could be objectively justified for London's one-off, special event.

There are some action points which you should carry out when a contract becomes permanent. Within one month of the change, the employee must be given a statement of changes to the terms and conditions of employment, for example confirming the length of the new notice period. Failure to do so may result in an employment tribunal making an award of two to four weeks pay (capped at £290 per week).

A fixed-term employee who considers that he/she has permanent status can make a written request to you for confirmation that the contract has become permanent. If you receive such a request you must respond within 21 days and if you fail to do so, the employee can complain to the tribunal.

HAPPY (LONGER) HOLIDAYS!

The Government is proposing to increase the current statutory minimum holiday entitlement (provided for under the Working Time Regulations 1998) from 4 weeks (20 days) to 5.6 weeks (up to a maximum of 28 days). The thinking behind the change is to make paid time off for Bank holidays additional to the current minimum entitlement. Consultation closes on 22 September 2006 and any new regulations will come into force in October 2007.

AGE DISCRIMINATION: HOW TO PREPARE

There are less than two months before the new rules and it is already clear that no business will escape the impact of the new law. Age discrimination has been around in Ireland since 1999 and over 25% of all discrimination claims there now include an age aspect (attendees at our Autumn 2005 seminar will already know this!) There is already a legal challenge to the new Regulations being made by a not-for-profit organisation, which contends that the provisions allowing employers to retire employees at 65 or above (provided they go through the correct procedure) do not comply with EU law.

No employer wants to be the first to hit the headlines with a claim, so in the run up to the introduction of the new rules, we recommend that you conduct an age audit across your business. This will help you identify any problem areas and formulate a targeted plan of action, taking expert legal advice on those areas you perceive as being particularly problematic. We can supply you with a checklist to get you started and more detailed advice on all aspects of the new law, from pre-recruitment to redundancy and retirement.

NATIONAL MINIMUM WAGE

On 1 October 2006 the national minimum wage will increase to £5.35 for workers aged 22 and over and £4.45 for workers aged 18 to 21.

HMRC – CASHING IN!

This edition's tax news relates to a recent case involving a scheme that attempted to avoid employer's National Insurance Contributions on payments to the directors of a company.

The bare bones of the scheme were that rather than bonuses, the directors received gold Napoleon coins, purchased by their employer from a bullion dealer. The directors then sold the coins back to the dealer. The dealer took a small fee for the sale and repurchase. The company did not pay secondary NICs on the payment because on a strict interpretation of the law, the coins were not classed as "payments in kind" and were not a cash payment. The Special Commissioners rejected this interpretation and found for HMRC. Of interest was the approach they took in looking at the purpose of the NICs legislation rather than the strict letter of the law. The purpose of the provisions in question was that mechanisms designed to deliver cash should be subject to NICs. The coins were such a mechanism, a fact which was strengthened by the fact that arrangements were in place for the coins to be bought back. Given that this scheme was used by thousands of directors and employees, it remains to be seen whether HMRC will use this case to target more of its users. If you think that this case might affect you, please let us know.

CASE BITES

Big bills for bullying

The House of Lords' decision that the Protection from Harassment Act 1997 (the law originally designed to combat stalking) applies equally to victims of harassment in the workplace has sent shockwaves across the business community.

Mr Majrowski, a former employee of Guy's and St Thomas' NHS Trust, brought proceedings against the Trust alleging that his former manager had bullied him whilst he had been employed by the Trust. The House of Lords decided that the Trust could be vicariously liable under the 1997 Act for harassment committed by the manager in the course of her employment.

This means that employees have a new route for bringing harassment claims - and a more attractive route when compared with bringing such claims under other Acts or as a personal injury claim.

Majrowski v Guy's and St Thomas' NHS Trust

Flexible working: know the facts

In *Commotion Ltd v Rutty* the Employment Appeal Tribunal upheld the claimant's unfair dismissal claim after her request to work flexibly was refused by her employer. Whilst the EAT was not entitled to investigate whether the employer acted fairly or reasonably in rejecting the flexible working request it was entitled to look at the grounds for refusing the application and here the grounds were based on incorrect facts.

Not another grievance!

The Employment Appeal Tribunal has confirmed that complaints made by an employee in an equal pay questionnaire (and therefore in the statutory discrimination questionnaires generally) did not constitute a grievance for the purposes of satisfying the dispute resolution procedures (*Holt-Gale v Makers UK Ltd*). The claimant could therefore not proceed with her claim until she had submitted a fresh written grievance to her employer.

DATES FOR THE DIARY

Our Autumn Employment Seminar will take place on Thursday 2 November in London and Friday 3 November in Oxford. Attendees will be transformed into super-sleuths as they are coached on how to tackle fraud in the workplace! If you would like to receive an invitation please email bh@boodlehatfield.com.

AND FINALLY.....

- The Government has published the Maternity and Parental Leave etc and the Paternity and Adoption Leave (Amendment) Regulations 2006. These Regulations bring in the changes contained in the Work and Families Act 2006. The Regulations will come into force on 1 October 2006, but the changes will only affect employees who have a baby or adopt on or after 1 April 2007. The new law will be a feature in our Autumn Newsletter, but in the meantime, look out for Karen's comments on the changes in Personnel Today.
- If you have any international employment queries, please do let us know. We are founder members of a well-established international legal network and regularly assist clients in finding solutions for employment issues outside the UK. We are attending an international conference in October and participating in the international employment law sessions.

EMPLOYMENT CONTACTS

This bulletin is intended to provide a first point of reference for current developments in aspects of Employment law. It should not be relied on as a substitute for professional advice. If advice on a particular circumstance is required please contact your Boodle Hatfield lawyer or:

KAREN BLACK Direct line: 020 7079 8181. Email: kblack@boodlehatfield.com

SARAH GUDGIN Direct line: 020 7079 8245. Email: sgudgin@boodlehatfield.com

If you wish to receive this publication by email or if you no longer wish to receive this bulletin, please email: bh@boodlehatfield.com

©Boodle Hatfield 2006. Boodle Hatfield is not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment services to clients because we are a member of the Law Society. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide.