

Newsletter

Winter 2008

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UK Opt-Out on Working Time is Retained

A compromise agreement has seen the UK retain its opt-out from *The Working Time Directive (WTD)*, but in exchange for an average hours cap of 60 and new conditions on the use of the opt-out.

European employment ministers finalised a text for the long-discussed revision of the WTD on 9 June. The text now passes to the European Parliament (EP), which has the power to amend it, before returning to the employment ministers.

The new rules are not likely to apply until 2012.

The main changes include:

- A 60 hour cap for those in the UK who sign the opt-out (averaged over three months);
- Clarification of whether time spent on-call counts towards the working time limit, with 'inactive' time only counting if the individual member states include it;
- A ban on the signing of opt-outs in the first four weeks of an employment contract;
- Removal of the notice period required to opt back in during the first six months of a contract, after which time the notice period will be two months;
- The renewal of opt-out agreements after a year;
- A requirement for employers to keep records of hours worked by those who opt out; and
- An exemption to the working time limit (including the 60 hour cap) for workers employed by a company for 10 weeks or less in any one year.



***We wish you
a Happy
Christmas &
a Prosperous
New Year***

This year we have again decided to donate the cost of Christmas cards to a charity. Our choice is the Children's Hospice at Milton, Cambridge. If you wish to know more about the work of the Hospice, you can visit their website at www.each.org.uk.

EMPLOYMENT TRIBUNALS BRING NEW FEAR TO REDUNDANCIES

With fears of an economic recession and employment tribunals on the rise, redundancy is not necessarily the easy solution Employers seek.

Employers looking to cut costs by making staff redundant may find that instead of the financial gain they envisaged, they are facing greater financial pressures from claims raised against them by disgruntled employees at tribunals.

Latest figures by the UK Tribunals Service highlights a 42% rise in claims over the last twelve months.

Economically this is a dark time for UK businesses and employers are increasingly looking at ways in which to preserve their long-term future. Many believe that the only way to do this is to make employees redundant. However, because they're often unaware of the procedures involved in dismissing someone fairly, they are not only paying out the costs of making staff redundant, they are also faced with litigation costs and tribunal awards.

It is difficult, particularly for smaller businesses, to put in place and execute plans quickly for these challenging times. In the current environment, they need to equip themselves with a different toolkit to tread the fine line between treating your employees fairly, avoiding tribunals and at the same time contributing to the organisation's cost reductions.

LIABILITY INSURANCE RULES TO CHANGE

Employers will be allowed to display their employers' liability certificates in electronic format from 1 October this year, provided that all employees can access them.

Under previous legislation, employers must display at least one copy of their certificate at each place of business; typically in communal areas such as the kitchen. The Employers' Liability (Compulsory Insurance) (Amendment) Regulations 2008 amend the original 1998 Regulations to allow companies to make the certificate available in electronic format.

The new Regulations also remove the requirement for employers to keep certificates for 40 years - a measure that was introduced to make it easier for workers to raise claims for "long-tail" industrial diseases, such as mesothelioma, which can take many years to develop.

The changes are part of the Department for Work and Pensions' drive to reduce the administrative burden on businesses by 25%. Companies can continue to display certificates in hard format if this is more cost-effective, for example in small firms with one site.

MORE CHANGE AHEAD FOR PENSIONS IN 2012: "PERSONAL ACCOUNTS" ARE YOU PREPARED?

If you have not already heard, there are some **more** radical pension reforms on the way in April 2012. It may seem like a long way off but you need to plan for this change **well ahead of time!** These changes could have an impact on your existing pension arrangements.

So what is happening?

As usual the fine detail is not yet known!

In essence the Government is planning to bring in a new system for pension saving in April 2012 called "Personal Accounts". They look set to be a basic product with several limitations but unlike Stakeholder Pension Legislation **there will be a requirement for Employers and Employees to make contributions (3% employer contribution and 4% employee contribution plus 1% tax relief)** unless the employee "opts out". Therefore, you will need to budget accordingly from April 2012.

If you have a "qualifying scheme" you may be exempt from "Personal Accounts". The following includes points you may need to review in relation to your existing scheme in order to be "exempt". The "qualifying scheme" criteria has not been finally defined but there are already some hints about what the criteria will be.

Personal Accounts – The basics so far:

- They are the Governments latest initiative to resolve the "pensions crisis".
- They will be established under the Pensions Act 2008
- The Personal Accounts Delivery Authority (PADA) will be responsible for the initiative.
- Proposed commencement date is 6th April 2012 and will be aimed at jobholders who are not a member of a pension scheme.
- Jobholders will be auto enrolled into the scheme unless they are already active members of a "qualifying scheme" or they opt out.
- "Jobholder" is defined as anyone with qualifying earnings aged between 16 and 75
- Qualifying earnings are between £5,035 and £33,540 per year (2006/07 figures)
- "Qualifying earnings" include salary, wages, commission, bonus and overtime and maternity, paternity or adoption pay
- Contributions will be a minimum of 8% of qualifying earnings and at least 3% must come from the employer
- Contributions will be phased in over three years (2%, 5% then 8%)
- Those who are auto enrolled can opt out, and receive a refund, within an unspecified "prescribed period".

- Those who opt out will be automatically re-enrolled at intervals of no less than three years
- There will be a limit on the total amount of contributions that can be paid, current proposals are a £5,000 gross per annum total contribution.
- Transfers in and out of Personal Accounts will not be possible for at least the first 5 years.
- The options at retirement may be restricted to annuity purchase via the open market option.
- Stakeholder "designation requirements will be removed when Personal Accounts are introduced.
- Nothing definite has been decided in relation to "Qualifying scheme" criteria.

Personal Accounts look set to be a very basic product. Employees who want more than a basic pension product should note the following restrictions of Personal Accounts:

- Very restricted/basic fund choice.
- Maximum contributions per annum of £5,000 gross. Other pension arrangements currently allow much higher contributions than this e.g. £235,000 for 2008/09 tax year.
- A ban on transfers in and out will not give the flexibility and simplicity that some people desire.
- A restriction on options at retirement of annuity purchase only will mean that more flexible options are not accessible.

Personal Accounts *may* have a place for some Employers who employ a lot of lower earning employees or employees who require just a basic pension product, but the detail is not yet clear.

If you already have a pension scheme in place, ensuring that your scheme meets the "Qualifying scheme" criteria will maintain the ability to cater for the needs of more sophisticated employees, while showing that you as the "Employer" is interested in providing a high quality Pension Scheme for your employees.

Please note that as the "Qualifying Scheme" criteria has not been confirmed the following does not constitute advice and is our initial view on what areas you *may* need to address. In the meantime you should start to consider the impact any changes you may need to make would have.

The areas of your scheme design that may need attention are shown below:

1) **Waiting period for membership:**

There will be no waiting period for Personal Accounts. It is likely that a 3 month waiting period for a "qualifying scheme" may be acceptable. However, there has been some discussion that where there is a waiting period a higher level of employer contribution may be required. (*Mike O'Brien, the Minister for Pensions Reform, suggested in a House of Commons debate that the minimum employer contribution where there is a scheme waiting period might be 6%. But this has not yet been finalised.*)

2) **Schemes that are not open to all employees:**

Any employee who is not a member of a "qualifying scheme" will need to be auto enrolled into a Personal Accounts, therefore it is likely that to be a "qualifying scheme" you will need to ensure that your scheme is open to all employees and that they can be "auto enrolled" into it.

3) **Schemes that do not make at least a 3% contribution for all employees:**

An employer contribution of 3% will be required for employees that are auto enrolled into Personal Accounts, therefore it is likely that to be a "qualifying scheme" a minimum employer contribution of 3% will be required, possibly more if there is a waiting period to qualify (*see 1 above*).

4) **Schemes that do not have a requirement for an employee contribution:**

An employee contribution of 4% will be required for employees that are auto enrolled into Personal Accounts, therefore it is likely that to be a "qualifying scheme" a minimum employee contribution of 4% will be required.

5) **Schemes where employees total earnings are higher than their basic salary but the employer pension contribution is based on basic salary:**

Personal Account contributions are currently proposed to be based on an employees total earnings between the upper and lower earnings level. This may present some challenges for employers that make contributions based on basic salary but where total salary could be higher than this.

6) **Schemes where the employee makes a contribution via salary sacrifice:**

It is not clear if an employee contribution made by salary sacrifice (which in effect is therefore paid to the pension provider as an "employer contribution") would count. Salary sacrifice schemes will need close attention.

Case Roundups

Horrific loading causes crushed skull

A warehouseman's head was crushed between a lorry and a concrete wall at Schenker an international haulage firm.

The company had been using a faulty dock leveller to create a flat surface between the warehouse and the back of a lorry at a loading dock. Mark Treadwell had been standing on the back of the truck waiting for the leveller to come up. The leveller was not working so Mr Treadwell shouted for the truck driver to back away from the dock.

Mr Treadwell thought the truck driver had not heard him so he stuck his head out to shout to the driver again. As he did so, the driver reversed and crushed his head between the truck and the wall."

Mr Treadwell suffered severe injuries, including a fractured nose, brain-stem bleeding, blurred vision, speech and balance problems, and a perforated eardrum, and is unlikely to be able to return to his job.

In mitigation the company agreed that its risk assessment process had not been adequately robust. It did not appreciate the risks involved in the process, and said it believed its maintenance company had been in charge of the job.

The court fined Schenker a total of £45,000 on 30 June, after it pleaded guilty to breaching s2 (1) and 3 (1) of the HSWA 1974 by failing to protect the safety of both employees and non-employees, and to a breach of reg. 5 (1) of the Provision and Use of Work Equipment Regulations 1998, by not maintaining work equipment in good working order and repair. It was fined £15,000 on each charge and ordered to pay full costs of £19,300.

Asbestos the Hidden Killer

During October and November 2008 HSE in partnership with key stakeholders ran a national campaign to target tradesmen who are still at risk from exposure to asbestos.

You may be aware that Asbestos dust is a killer, but do you know to what extent you are personally at risk?

Every year 4000 people die of work-related asbestos diseases, more than are killed on the roads, and this number is still rising. If you work on buildings that were built or refurbished before the year 2000 you are likely to come across asbestos. Can you identify where asbestos may be present in a building, what it might look like and what to do to protect yourself?

Protecting Employees

The Health and Safety Executive (HSE) has warned all employers to ensure they protect their workers lives after the jailing of a company Director for manslaughter.

Sharaz Butt, the Director of Alcon Construction Ltd of Norwich, was sentenced to twelve months jail in Norwich Crown Court after pleading guilty to the manslaughter of Wu Zhu Weng. He also received a five-year disqualification from acting as a company Director after pleading guilty to breaching section 37 of the Health and Safety at Work etc 1974 Act.

Did you know.....

- that the Royal Society for the Prevention of Accidents (RoSPA) has claimed that the number of people injured at work every year is equivalent to 20 jumbo jets full of people being injured every day.
- that there has been an increase in the number of manhole covers being stolen for scrap metal, with one council saying that it has had 11,000 stolen in the last six months. (That's sixty a day).
- that British businesses are losing £250 a second in costs and payouts for needless accidents in the workplace. This is according to the British Safety Council's survey, 'Safe and Sound?', which found that 62 per cent of workers had received little or no health and safety training from their employers.
- that workers in the construction industry, and employees of small and medium-sized companies, are said to be most at risk of accidents.

SETTLING EMPLOYMENT CLAIMS ON TERMINATION

Tax and compromise agreements:

- The £30,000 exemption from tax on termination payments has remained unchanged since 1987/1988
- Termination of contract – employee required to work notice or not required to work notice period and placed on garden leave. In both cases payments flow from the contract and are taxable as earnings.
- PILON (pay in lieu of notice) if clause in contract then payment is taxable.
- Case law Discretionary PILON clause Employee worked notice of one month and paid remaining notice of five months in lieu – payment subject to tax and national insurance.
- Benefits post termination P11D taxable.
- Counselling, outplacement and retraining courses – if meet the requirements of IR S310 and 311 non taxable.
- Injury to feelings not related to termination non taxable (proven genuine injury to feelings).
- PILON when contract is silent – notice pay may possibly be paid without deductions if the contract does not have a PILON clause and the employer breaches the contract by paying in lieu of notice. However there is no definitive answer and therefore the safest route is to make usual deductions.
- Employers should take care when dealing with notice payments in compromise agreements and obtain tax indemnities from the employee if there is any doubt as to whether the payments are taxable.

We would always advise that you contact *The AP Partnership* regarding the preparation of a Compromise Agreement.

10 THINGS TO CONSIDER FOR THE CHRISTMAS PARTY

The festive season is upon us once again and as the Christmas Party season looms ahead, many employers start worrying about what could happen when the staff have had a drink or two; and what responsibilities and liabilities can fall to the company. So that everyone can have an enjoyable time, follow the 1 to 10 rules for the Christmas Party.

1. The invitation

Remember Christmas is a christian holiday. Don't pressure anyone to attend if they do not want to on religious grounds. If the event is out of working hours remember that employees have family responsibilities and may not be able to attend.

If you are having a gift swap/secret Santa make sure everyone is aware that all gifts should be inoffensive. If alcohol is also excluded make sure this is made clear.

2. Decorating the office

Health & Safety does not take account of Christmas.

Use a stepladder to put up decorations – don't stand on the desk. Don't hang tinsel where it might catch fire ie. on computers. Don't decorate emergency exit signs.

Switch off any Christmas lights before going home, your insurance may not cover damage caused by untested electrical equipment.

Party balloons can kill!: around 3.6 million people in Britain suffer from some degree of latex allergy. Christmas trees too! – make sure they are secure and that the lights are not a tripping hazard.

Keep fresh party food in a fridge before the party; use paper cups, not glasses; move computers out of range of spillages; and avoid indoor fireworks, flaming puddings, candles.

3. Free booze

If you are providing free drinks consider limiting the amount to a reasonable level. In one case, three employees of the Whitbread Beer Company got drunk and had a fight after a seminar on improving behavioural skills. They successfully argued that their resulting dismissals were unfair. A relevant factor was that the employer had provided a free bar and thus condoned their behaviour.

Make sure there are plenty of soft drinks available as well as the alcohol. Nobody likes a drunk. Set a good example yourself by drinking sensibly and make sure your senior managers do the same.

Liquid lunches are another risk. If there is urgent work to be done, disciplinary

action may be appropriate if staff are late back to the office or intoxicated. But be careful: a history of festive tolerance could be used as evidence that disciplinary action against an individual is unfair.

4. Age limits

Remember it is the law that people under the age of 18 cannot drink alcohol.

5. Tables and photocopiers

Dancing on desks aside from the likelihood of it ending in tears, causes damage and other activities can also amount to misuse of company property and are disciplinary offences. If you have your Christmas party on Company premises make it clear that such activities will not be tolerated and the consequences and/or certain areas of the office are out of bounds at the time of the party.

6. Don't ignore drugs

Under the Misuse of Drugs Act 1971, it is an offence for an employer to knowingly permit or even to ignore the use, production or supply of any controlled drugs, from cannabis to cocaine, taking place on their premises. There may also be a breach of the Health and Safety at Work Act.

7. Misguided by mistletoe

Mistletoe can be dangerous! A survey reported that, whilst 80% of women would laugh off a pass made by a male co-worker, boss or client, 20% would lodge a complaint.

Make sure everyone knows this, and you send a memo in advance of the party reminding everyone of the policies.

Do not allow your managers or staff to invite anyone to join them under the mistletoe or be the ones to organise the "who can drink the most" competition.

If you are providing entertainment make sure it appeals to everyone regardless of age, race or gender. Make sure the disco plays a suitable variety of music and any speakers or entertainers are inoffensive.

8. Manage expectations

If you have paid a discretionary Christmas bonus for several years, staff can argue that it has become contractual through custom and practice. If times have been tough and you cannot afford to pay a bonus this year, tell staff why you feel unable to pay and try to agree a solution. ACAS suggests that you could offer to pay a proportion of the bonus or stagger payments in the next few months. Another option is to offer to pay the drinks bill at the Christmas party.

9. Getting home

As an employer you still have a duty of care to your staff so put some thought into how they are going to get home. Clearly you must not let them drive home if they have been drinking. Consider ending the party before public transport stops running; or provide the phone numbers for local cab companies and encourage staff to use them.

10. The morning after

If the party is mid-week and people are expected to attend work the next day, ensure it is clear that employees will face disciplinary action should they fail to attend work because of hangovers, over indulgence etc. Alternatively, you could consider allowing staff to start work later in the day.

No-one wants a sterile Christmas party or to be a kill joy and notwithstanding the above it is an opportunity to thank employees for their hard work during the year. It is also an opportunity for everyone to socialise and have fun especially with people you do not see very often.

So have fun! enjoy the festive season, just be aware of what could happen and put in place appropriate measures.

The AP Partnership Ltd Peterborough Office Christmas 2008

Would you please note that the Peterborough office will close at 1.00 pm on Wednesday 24 December 2008 for the Christmas period and will re-open at 9.00 a.m. on Friday 2 January 2009.

Emergency call contact numbers will still be available via our messaging service on 01733 891081.



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