

Occupational Health Advice

The Government has launched an occupational health advice line which is being piloted within England, Scotland and Wales. The pilot will run until March 2011.

The advice line will provide small business owners, managers and employees with early and easy access to high quality, professional advice. It will be tailored to business needs, as well as being able to respond to individual employee health issues.

Small businesses now have access to the help they need to support an employee when they experience ill health at work – helping them to maintain the services of that individual. This is fundamental to business success.

Why the Advice line?

Employee sickness absence has a detrimental effect on business profitability so it's crucial to minimise sickness absence and properly support employees who are at work with ill health. With some small businesses losing on average 12 days a year to physical or mental ill health, the potential impact on business is considerable.

Contacting the Advice line will help provide the immediate help and support needed by an employee experiencing ill health. Businesses will understand how to manage future cases of employee ill health and

sickness absence, and how to introduce healthier working practices that will positively impact on all staff.

What's more, investing in the health of staff makes sound commercial sense in terms of business performance, productivity and staff morale, and it helps create a healthy working culture.

England:

www.health4work.nhs.uk/
Tel: 0800 0 77 88 44

Scotland:

www.healthyworkinglives.com/
Tel: 0800 019 2211

Wales:

www.healthyworkingwales.com/splash_wales/en.html
Tel: 0800 107 0900

The service is available to:

- Owners and Managers of businesses with 0-249 employees in England and Wales. In Scotland, the service is available to all businesses.
- Employees working in businesses that employ up to 249 people in England and Wales. In Scotland, the service is available to all employees.

Former Staff Convicted Over World's Worst Industrial Accident *continued from page 2*

Campaigners were outraged at the leniency of the court's verdict. Speaking to The Guardian, Rachna Dhingra, of the Bhopal Group for Information and Action, said: "These men have been convicted of the equivalent offence of causing a road-traffic accident." There is also anger that Warren Anderson, Union Carbide's chairman at the time of the disaster and who lives in the US, has never returned to India to face trial.

In a statement after the verdict, Union Carbide said "the Bhopal plant was detail designed, owned, operated and managed on a day-to-day basis by Union Carbide India Limited (UCIL) and its employees. All the appropriate people from UCIL – officers and those who actually ran the plant on a daily basis – have appeared to face charges."

It went on to emphasise that neither Union Carbide nor its officials are "subject to the jurisdiction of the Indian court, since they did not have any involvement in the operation of the plant, which was owned and operated by UCIL".

In 1989, after a ruling by the Supreme Court of India, Union Carbide Corporation and Union Carbide India Ltd paid the Indian government \$470m in a final settlement of all Bhopal litigation. The Indian Government still have an arrest warrant out for Warren Anderson.

The trial serves to highlight the fact that multinational companies can be held to account for health and safety errors; the holding company and management team can distance themselves from litigation, whilst the domestic team can be prosecuted, fined and even imprisoned.

Nurse Loses Battle to Wear Crucifix

A Christian nurse, who was moved to a desk job by her employers because she refused to remove a crucifix, has lost her discrimination case.

Shirley Chaplin, who worked at the Royal Devon and Exeter Hospitals NHS Trust, claimed her employer was preventing her from expressing her religious beliefs, but the tribunal ruled her employer had behaved in a reasonable manner.

The tribunal stated that wearing a crucifix is not mandatory for Christians, and therefore does not have to be accommodated by the employer. The tribunal then moved on to say that the hospital had acted reasonably by moving Mrs Chaplin from ward duty to a desk job.

The hospital cited Health and Safety concerns to justify moving Mrs Chaplin to a new role. This followed a risk assessment showing that the crucifix could be pulled by a patient. She has worn the crucifix on the ward for over 30 years with no problems. The hospital had offered her compromises such as pinning the crucifix to her uniform.

The tribunal also noted that the hospital had dealt with other situations relating to faith in a similar fashion. For example, ordering Sikhs to remove bangles and Muslim doctors to switch to tight-fitting sports hijabs.

Mrs Chaplin said it was "a very bad day for Christianity" and she still intends to wear the crucifix to work.



The employment law specialists

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Illegal Worker Fines Show Massive Increase

Employers need to carry out more thorough checks on job candidates as the number of fines for employing illegal workers doubled in 2009 according to data obtained under the Freedom of Information Act by office solutions provider Giant Precision.

The Government introduced a new system in March 2008 to reduce the number of illegal workers in the UK. This gave the UK Border Agency the power to issue civil penalties of £10,000 to employers for every illegal worker.

In 2009, the UK Border Agency imposed 2,210 civil penalties on employers of illegal workers totalling £22.1 million. This is almost double the number of civil penalties issued in 2008 when 1,164 civil penalties were issued, worth £11.2 million in fines.

The year before the new civil penalty system was brought in, there were only 38 prosecutions for employing illegal workers. This means that there was a 2,963% increase in prosecutions in the first year of the new system alone.

Matthew Brown, Managing Director of Giant Precision, said: "These figures show that identity checking is fast becoming one of the biggest compliance risks for employers and recruitment suppliers."

Newsletter

Summer 2010

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Lying at Employment Tribunal

The original case took place in 2007 but was not reported in the press until 2009. The reason for this was that the Employment Tribunal was not the conclusion of the proceedings against the said Employer. The claim was made by a former employee of a car hire company following her dismissal. The employee alleged she had been subject to harassment and had never received a Contract of Employment.

The estimated value of compensation for the claim was £1,750 but at the conclusion of the proceedings the Tribunal awarded £29,500 to the employee. The reason the case was not reported sooner was that the Tribunal claim was not the end of the matter. A criminal charge of Perverting the Course of Justice was brought against the Company.

During the Tribunal the employer had submitted documents to support his case. This included a contract of employment, which the employee claimed she had not received, and a warning letter which she had apparently signed. This looked like a strong defence until the employee produced other documents bearing her signature which bore no resemblance to that on the warning letter. The Tribunal therefore found in the employees favour. When the employer was then contacted by the Police he admitted in full that he had forged the documents and attempted to influence the judgement of the Tribunal. As such he was guilty of attempting to pervert the course of justice and the employer was made to face the criminal charge of Perverting the Course of Justice.

The employer confessed that he had not followed certain employment procedures, had forged the warning document and had not issued a written contract of employment. Sheriff Isabella McColl said the case was one of the most serious cases of attempting to pervert the course of justice she had seen. She told the employer that the system of justice relied upon honest evidence and to produce forged documents at the Employment Tribunal undermined the whole system. She imposed a custodial sentence of 4 months imprisonment on the employer to take into account the severity of the situation. This was in addition to the surprising amount awarded by the Employment Tribunal.

Clearly, this case involved extreme actions taken by the employer in question in a vain attempt to prevent a claim raised by his former employee and the consequential award. It does serve as a stark reminder of the very serious nature of the Employment Tribunal process.

While the Tribunals themselves may have a more relaxed or informal feel than a County or Sheriff Court they do meet the definition of "court" for the purposes of the Contempt of Court Act 1981. So, although of themselves Tribunals cannot punish under this act, further action can be taken in the civil courts. The impact of such actions, as can clearly be seen in this case, can have disastrous consequences for those involved.

Additional Paternity Leave

Following on from our Winter 2009 Newsletter; the Government has now introduced a right to additional paternity leave for fathers (including adoption).

The Additional Paternity Leave Regulations 2010 came into effect on 6 April 2010 and mean that fathers are now entitled to take up to 26 weeks additional paternity leave. There are, however, a number of qualifying requirements and restrictions on when and how much additional leave can be taken.

The qualifying requirements and restrictions are based on similar principles as the pre-existing right to paternity leave, such as having 26 weeks continuous service with an employer. However, there are a number of important new qualifying requirements and restrictions as follows:

- Fathers may only take additional paternity leave provided the mother has returned to work
- The additional paternity leave must not start until at least 20 weeks after the birth or adoption and must end no later than the child's first birthday or 12 months from the date of placement
- The additional paternity leave must be for a minimum of 2 weeks
- The additional paternity leave may

Co-op Fined £210K for Breach of Fire Regulations

The organisation was served with a £210,000 fine and ordered to pay costs of more than £28,000 after it pleaded guilty on 26 April to six breaches of the Regulatory Reform (Fire Safety) Order 2005.

The offences were brought to the attention of Hampshire Fire and Rescue Authority after it carried out fire-safety inspections at one of the Co-op's Southampton stores in September 2007. Among the oversights, the Authority found that the organisation had failed to keep the rear emergency exit doors unlocked for easy exit in an emergency; and had fitted a lock requiring a security code on the emergency door between the retail and storage areas, which prevented the door from being easily opened in an emergency.

Officers also noted that the Group had failed to ensure that the Store Manager was given suitable and sufficient fire safety training; and had failed to ensure that the fire alarm system underwent regular testing.

Southampton Crown Court heard that breaches also occurred at two other Southampton premises, and a store in Portsmouth. Summing up, Judge Barnett said the case demonstrated a lamentable approach to fire safety, and that the Co-operative Group had been responsible for a potential death trap, given the severity of the fire-safety failings.

only be taken in multiples of complete weeks and as one continuous period

- If the additional paternity leave is taken it will be paid at the same rate and in the same way as the rate of Statutory Maternity Pay applicable at the time
- The additional paternity leave cannot be taken until 8 weeks after the father has notified their employer of their intention to take leave
- The father must provide his employer with a written leave notice and the mother must give a written declaration stating when she intends returning to work.
- The employer may ask the father to provide a copy of the child's birth certificate and the name and address of the mother's employer

The introduction of this new right in practice means that the parents can now have the option of sharing paid leave entitlement between them.

The regulations do not, however, mean that all expectant fathers are now entitled to take additional paternity leave and the changes will only have an effect on fathers where the expected week of birth, or matching for adoption, is on or after 3 April 2011.

Former Staff Convicted Over World's Worst Industrial Accident

Seven men have been convicted more than 25 years after a gas-plant leak in Bhopal, central India amounted to the biggest industrial disaster the world has ever known.

The men – all Indian employees of US Company Union Carbide – were convicted in an Indian court on 7 June of “death by negligence” and sentenced to two years in prison, but bailed pending appeal. They were also ordered to pay fines of 100,000 rupees (£1,492) each. An eighth man was convicted posthumously.

On 3 December 1984, toxic methyl isocyanate (MIC) gas leaked from the Union Carbide factory. An investigation indicated that a large volume of water had been accidentally introduced into a tank, which caused an exothermic reaction with the MIC. The tank reached temperatures of 200°C, which forced an emergency valve to open and allowing the gas to leak into the atmosphere. A poisonous cloud of MIC and other chemicals was blown over much of Bhopal.

Several other factors were identified by the inquiry, including the fact that the operators chose a dangerous method of manufacturing pesticides, there was large-scale storage of MIC before processing, the location of the plant was close to a densely populated area, there was under-dimensioning of the safety features, and the plant depended on manual operations.

Deficiencies in the management of UCIL were also identified. There was a lack of skilled operators due to the staffing policy, there had been a reduction of safety management due to reducing the staff, there was insufficient maintenance of the plant and there were only very loose plans for the course of action in the event of an emergency.

The Madhya Pradesh state government says that around 3800 people died in the immediate aftermath of the incident, and more than 15,000 in the years since.

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The Bribery Act 2010

The Bribery Act is due to come into force later this year therefore employers should start to prepare.

Bribery – the offer or acceptance of a reward to persuade someone to act dishonestly and/or in breach of the law – can be an expensive business. Companies have faced fines in excess of £100m as a result.

The Bribery Bill was placed before Parliament in November 2009. It received Royal Assent on 8 April 2010, and is due to come into force later this year – most likely in October.

The Act provides for the following bribery offences:

- Bribing – the offering, promising or giving of an advantage.
- Being bribed – requesting, agreeing to receive or accepting an advantage.
- Bribing a foreign public official.
- The “corporate offence”, where a commercial organisation fails to prevent persons performing services on its behalf from committing bribery.

The new corporate offence under section 7 of the Act will be of most interest to employers. A company will be guilty of this offence if a person who performs services on behalf of the organisation (an employee, worker or consultant) bribes another person, intending either to obtain or retain business for the company, or to obtain or retain an advantage in the conduct of the company's business. The offence can be committed in the UK or overseas.

If a company is found guilty of corporate bribery, it is punishable by an unlimited fine. A bribery conviction can have wider implications for both individuals e.g. director disqualification, and business e.g. blacklisting from public procurement exercises.

The company can defend itself against liability if it can prove that it had ‘adequate procedures’ in place to try to prevent any incidents of bribery. If it is proved that a bribe was paid on a company's behalf with the intention to obtain or retain business for the company, an offence will have been committed for which the company will be liable, subject to the “adequate procedures” defence.

The key question for employers is; what constitutes ‘adequate procedures’? Under the Act, the Government is obliged to issue guidance “about procedures that relevant commercial organisations can put into place to prevent persons associated with them from bribing”. As yet, it is not clear when this guidance will be provided and as the Act's implementation date fast approaches this is causing much concern.

So what can employers do now?

- Carry out risk assessments and audit policies and practices to assess the nature of, and to minimise the compliance risks thrown up by the Act, particularly in relation to the use of third parties such as agents, distributors and sub-contractors.
- Ensure that any corporate code of conduct or ethics code reflects the Act as well as other relevant law.
- Directors and senior management should take a lead on implementing and maintaining an anti corruption culture.
- Brief employees about the Act and train staff on existing and new procedures.
- Check and update detailed procedures on gifts and hospitality, facilitation payments and vetting of external agents and suppliers.

Employees working overtime can increase their risk of heart attacks by as much as two thirds

A study of 6,000 British civil servants, published in the *European Heart Journal*, suggests that people who regularly put in overtime increase their risk of heart disease by nearly two thirds.

According to the study, this is a serious concern for the British workforce, as revealed that 72% of respondents work longer than their basic hours and 27% work late every day.

Cathy Ross, senior cardiac nurse at the British Heart Foundation, which part-funded the research, said: “This study raises further questions about how our working lives can influence our risk of heart disease.

“Although the researchers showed a link between working more than three hours overtime every day and heart problems, the reasons for the increased risk weren't clear.

“Until researchers understand how our working lives can affect the risk to our health, there are simple ways to look after your health at work, like taking a brisk walk at lunch, taking the stairs instead of the lift, or by swapping that biscuit for a piece of fruit.”

Dr John Challenor, from the Society of Occupational Medicine, said: “In many ways it confirms what we as occupational health doctors already know – that work/life balance plays a vital role in well-being.”

“Employers and patients need to be aware of all of the risk factors for coronary heart disease and should consider overtime as one factor that may lead to a number of medical conditions.”