

Newsletter

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TAX ON STAFF PARKING

The British Chambers of Commerce (BCC) has warned that businesses throughout England could face a £3.4 billion bill for using their own car parking spaces.

This could become a reality if all local authorities decided to apply for the controversial Workplace Parking Levy (WPL) that Nottingham City Council (NCC) has already applied for. They are currently awaiting a decision from the Secretary of State for Transport for confirmation of the Workplace Parking Levy Order.

The WPL will require all businesses to register workplace parking spaces. Those with 10 spaces or more will suffer a financial strain because they will have to pay for each parking space.

NCC's levy would commence in April 2010 at an initial cost of £185 per annum, per workplace parking space but will rise to £350 by 2014. There will also be penalties for exceeding the number of declared parking spaces, enforced by random checks.

This levy could not only affect businesses but also employees. As businesses struggle to control costs in this time of recession, they may decide to pass on the levy on to employees as opposed to paying it themselves. Businesses may also decide to reduce their car parking spaces and consequent liability, making parking for employees more difficult.

SWINE FLU

With the swine flu virus now officially classed as pandemic, what practical action can employers take to ensure their staff are as safe as possible?

Here are a few tips managers can take;

- Ensure you have up to date emergency contact details for all your staff.
- If one of your employees is concerned with their health then ask them to go home and rest. The symptoms of swine flu are described in the following link www.direct.gov.uk or call 0800 1 513 513.
- Ask your employees if they have any travel plans to the more heavily affected regions. If so, then offer support and guidance accordingly.

Holiday Entitlement and Pregnancy

In April 2009, the law changed on Maternity Leave and the distinction between Ordinary and Additional Maternity Leave was taken away for women due to give birth on or after the 5 October 2008. Consequently, during the 26 weeks Ordinary and 26 weeks Additional Maternity Leave, an employee is entitled to her full contractual holiday entitlement for the holiday year even if she is on Maternity Leave for some or all of it.

Holiday rules that allow no or limited carrying forward of untaken holiday from one year to the next can disadvantage employees on Maternity Leave, particularly if they take the full 12 months' leave. An employee can end up losing a large amount of holiday if the holiday year ends when she is on Maternity Leave. Equally, however, if an employee is allowed to carry forward all of her untaken holiday from one year to the next, she can return to work with a large amount of holiday stored up, potentially causing operational difficulties.

The problem can sometimes be avoided if, once you know that the employee is pregnant, you remind her about your normal holiday rules on carrying forward of accrued but untaken holiday and explain the effect this will have on her.

The best practice option is to encourage the employee to take her holiday entitlement in the months before her maternity leave begins or to terminate her Maternity Leave early and transfer onto holiday entitlement before the holiday year ends. Thus enabling her to take all holiday entitlement with minimum effect on the business and enabling you to meet your legal obligations.

If the employee still does not use up all her holiday entitlement before the holiday year ends, then apply your normal rules on carrying forward holiday entitlement, even if this results in the employee losing some holiday.

CASE ROUNDUP

Cases: Royal Bank of Scotland v Harrison

A recent Employment Appeal Tribunal case has shed some light on the issue of an employee taking time off to care for a dependant.

The legislation provides the employee with reasonable time off to deal with an emergency however the definition of dependant is quite specific. This case focused on a situation where there was an unexpected disruption of childcare arrangements which meant that it was necessary for a parent to take time off work.

Mrs Harrison was given two weeks notice by her child minder that she would not be available on a specific day. Mrs Harrison tried to make alternative arrangements but was unable to do so and she told her employer that she would need to take the specific day off work. The employer advised her that they were unable to grant the day off as they had not been able to find cover.

Mrs Harrison in any event took the day off which resulted in a formal disciplinary warning which she unsuccessfully appealed against. Mrs Harrison brought a tribunal claim and the tribunal considered whether she had suffered a detriment due to exercising her statutory entitlement to time off.

The tribunal found in Mrs Harrison's favour and said that even though she had two weeks notice of the unavailability of the child minder that unavailability was unexpected.

On appeal the EAT upheld the tribunals decision. Previously, it had been thought that requests made more than a day or two in advance were unlikely to qualify for emergency leave but this case shows that each case must be taken on its merits and it is not automatic that a request so far in advance can be justifiably refused.

The employer therefore is required on receipt of such a request to act reasonably and promptly in responding to that request and any decision must be based on the facts at that particular time.

MOBILE PHONE TRACKING

Google recently launched its latest product called Latitude. This could be what employers are looking for in order to keep tabs on employees who work out of the office or claim there are good reasons why they were late for work. It enables Mobile Phones to operate as tracking devices by plotting the phones location on a map.

When the product was launched comment was made on the concerns about privacy issues and notwithstanding the employee relations issues there will no doubt be legal implications too. The Data Protection Act restricts what information employers can collect on their staff and what they can do with it. Employers must obtain employee information for lawful purposes only and use it fairly and lawfully. The information the employer collects must be adequate, relevant and not excessive.

The employer would be required to show that they have carried out such monitoring with the employees consent or that they had reason to carry out the monitoring such as the requirement to meet a legal obligation. Alternatively, the employer must show that monitoring is in the legitimate interests of the business.

It is unlikely that an employee will refuse consent knowing that they wish to continue working for the employer therefore the employer is required to be able to show a sound business reason for carrying out such monitoring, for example for the purpose of safety and knowing that the employees out of the office are alright. Conversely, if the employer just wants to check up on the employee without any basis for supposing that the employee is doing anything wrong then that is likely to breach the Data Protection Act.

If employers believe that they have a genuine reason for phone tracking they should assess the situation to determine whether monitoring employees in this way was a proportionate response to the problem they were seeking to address. The employer would then have to have a policy which explained to employees what was taking place and why it was taking place. The monitoring would need to be managed properly and be no more excessive than was necessary. Any other monitoring is unlikely to comply with the act.

Exceptional cases might be if there is an issue with the safety of an employee or if there is a suspicion that the employee is not where they should be or not doing what they were supposed to be doing in which case covert monitoring could take place. However, this without good reason could damage the trust and confidence necessary between employer and employee and lead to constructive dismissal cases. The conclusion therefore is that only employers who can justifiably show that they need to know the location of an employee will be able to use such monitoring.

First Prosecution Under Corporate Manslaughter and Corporate Homicide Act

The Criminal Prosecution Service (CPS) has authorised a charge under the Corporate Manslaughter and Corporate Homicide Act 2007 (CMA) against Cotswold Geotechnical Holdings Ltd – making it the first prosecution under the Act.

The charge is in relation to the death of Alexander Wright on 5 September 2008, who was taking soil from a pit, which had been excavated, when the pit collapsed.

Peter Eaton, a Director of the Company has been charged with gross-negligence manslaughter under section 37 of the Health and Safety at Work, etc. Act 1974. Cotswold Geotechnical Holdings Ltd has also been charged with a breach of section 33 of the HSWA 1974.

The case will attract much attention as it will provide information on the levels of fines and will scrutinise the definition of 'Senior Management' and how their activities amount to a gross breach of their duty of care. Moreover, there is still confusion over individual liability and whether Directors and Senior Management can be prosecuted for gross-negligence manslaughter – this case may provide some of the answers.

Making Redundancies – Top Ten Tips

In times of recession, it is an inevitable fact that redundancies will be prevalent – and that will cause distress to both employees and employers, but it is important that the employer focuses on the redundancy process to avoid defending a claim against unfair dismissal and potential compensation awards to the employee. *The AP Partnership* have put together 10 top tips to avoid a tribunal.

1. Ensure there is a genuine redundancy situation. For an employer to make employees redundant they must meet one of the following:

- Where the employer ceases business for which the employee was employed;
- Where an employer's requirement for a type of work ceases or decreases;

Not being able to demonstrate a genuine redundancy situation will give much evidence to support an employee's claim of unfair dismissal.

2. Identify how many redundancies are needed. This should be defined from the outset as different procedures apply depending on the number of redundancies that are forecast to be made. These procedures are as follows:

- Twenty or more redundancies within a 90 day period will mean that BERR will have to be notified;
- Between 20 and 99 redundancies requires 30 days consultation before the first dismissal;
- If more than 100 employees are to be made redundant then 90 days consultation is required before the first dismissal;
- In addition, if more than 20 employees are to be made redundant then group consultation must occur with either trade union representatives or elected employees.

3. Pool selection. Where a reduction in numbers is necessary, employees in that category must be pooled and a matrix process introduced to assess the skills etc of the pool. This can be done using a skills matrix. Employees in the pool must have a similar function, eg. a sales team. Misplacing people in the pool will give rise to claims of unfair dismissal – ensure the pool is well defined.

4. Ensure the matrix is robust. The selection process will use a 'matrix' to analyse the pool and select employees for redundancies. At a tribunal, the criteria

used in the matrix and objectivity of the marking will be scrutinised – so this must be very clear. Beware of discrimination issues during assessments.

5. Follow the procedures. It is important that the employer follows correct procedures which require meetings and meaningful consultation before a final decision is made. Employees who are made redundant are entitled to appeal against the decision.

6. Look at redeployment. Employers are under an obligation to look for alternative employment within their organisation and discuss these with the employees.

7. Pay the correct redundancy monies. Once the employees have been made redundant they are entitled to a redundancy payment. To qualify for redundancy payment, two years' service is required, the amount is then calculated by using the employees' age, length of service and weekly wage – currently capped at £350, but will increase to £380 on 1 October 2009.

8. Document everything. In the event that the employee made redundant makes a tribunal claim, the redundancy process will come under intense scrutiny – documenting everything in detail will ensure the employer can defend their actions.

9. Look at compromise agreements. This will avoid any claims of unfair dismissal, essentially the employee agrees to leave the company for an amount of compensation and not to lodge a tribunal claim. This can cost more money upfront but removes the risk of any subsequent tribunal action.

10. Be cautious when recruiting after redundancies. If the employer recruits shortly after making redundancies, it is recommended that the employees who were made redundant should be contacted and offered re-employment. If the ex-employees are not contacted then the redundancies may be challenged and unfair dismissal claims made.

Work Related Vehicle Accidents on the Increase

At a recent International Conference on Road Safety at Work, delegates were informed that up to a third of all road collisions involve drivers who are using their vehicles for work. The conference saw the launch of Driving for Work Guidelines.

The guidelines provide an overview of driving legislation, how to carry out risk assessments, and underline the benefits to businesses and the wider community of effective occupational road-safety management.

The Road Safety Authorities Chief Executive, Noel Brett, said: "Managing staff safety, while driving for work, makes good business sense, especially in the current economic climate, as it protects staff and business profits. For example, for every £1 claimed on insurance arising from work-related road incidents, companies may have to pay a further £8 – £36 for uninsured losses."

According to the Health & Safety Authority, vehicles are the biggest cause of work-related deaths and a significant contributor to work-related injuries. Studies show that people who drive company cars have between 30 and 40% more collisions than ordinary drivers, and this risk increases for those who drive more than 40,000km a year.

All employers are required by health and safety laws to put proper measures in place to protect the safety of all their employees. A 2008 HSA survey of businesses found that there was a lack of awareness by Company's of their duties to manage work-related driving activities."

DEALING WITH 'HEAT OF THE MOMENT' RESIGNATIONS

Employers may find themselves on occasions having to deal with 'heat of the moment' resignations, in common given verbally following an employee objecting to a particular instruction they disagree with or when complaining about alleged mistreatment.

Whilst such instances may at first appear an opportunity to gladly accept the resignation of a difficult employee, after an opportunity for reflection an employee may wish to rescind their resignation. The words used in such instances may also not reflect the employee's intention and be ambiguous.

As such, if an employer does not take time to consider the employee's actions objectively and act reasonably themselves, this could easily lead to the employee making a claim for unfair dismissal.

The AP Partnership Ltd would therefore always advise that an employer allows an employee an opportunity to consider their resignation before acceptance is confirmed.

Where the resignation is given verbally, an employer should always ask the employee to take time to consider their comments, preferably overnight rather than there and then – even if the employee walks out after stating their intention.

There should also be an attempt to verify the resignation by writing to the employee in order to ask whether this is in fact their intention and ask for written confirmation by return. Even where the employee's resignation is given in writing, we would still recommend that the employee is given an opportunity for consideration before a confirmation of acceptance is issued.

A moment taken by all parties to reflect and calm down is therefore preferable to days at a Tribunal Hearing arguing as to whether an employee's resignation was genuine or merely in the 'heat of the moment'.

FORTHCOMING LEGISLATION

Date	Changes
National Minimum Wage increases	
1 October 2009	The adult hourly rate for employees aged 22 and over increases from £5.73 to £5.80. The hourly rate for 18 to 21 year olds increases from £4.77 to £4.83. The hourly rate for 16 and 17 year olds increases from £3.53 to £3.57.
Budget increase in Statutory Redundancy Pay	
1 October 2009	The one-off 2009 Budget increase in the maximum amount of "a week's pay" for calculating redundancy pay increases the maximum from £350 to £380.
Vetting and Barring System (VBS) is launched	
12 October 2009	The new Vetting and Barring System (VBS) is launched, which will see all new employees working with children and vulnerable adults undergo an enhanced Criminal Records Bureau (CRB) check.

New Scheme to Protect Vulnerable People

From 12 October 2009, a new scheme will be implemented to stop unsuitable people from working with children and vulnerable adults. The scheme is called the Vetting and Barring System (VBS) and will be managed by a new government body entitled the Independent Safeguarding Authority (ISA).

The ISA will work in conjunction with the established Criminal Records Bureau (CRB). However, where the CRB uses police databases, the ISA will have the power to legally ban individuals from working with vulnerable people. Non-compliance to the system has penalties of prosecution and even imprisonment for both the employer and employee.

New employees and volunteers can register with the scheme from July 2010, and from November 2010 registration is compulsory. Employees will pay a one-off fee of £64 to register with the scheme, and volunteers can register for free. There are plans for all employees to be registered with the scheme by late 2011.

Employers can register with the scheme for free from July 2010, and this allows them to check employees online. The scheme affects all organisations that work with children and vulnerable adults.

For more information visit our website:

www.appartnership.co.uk.



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