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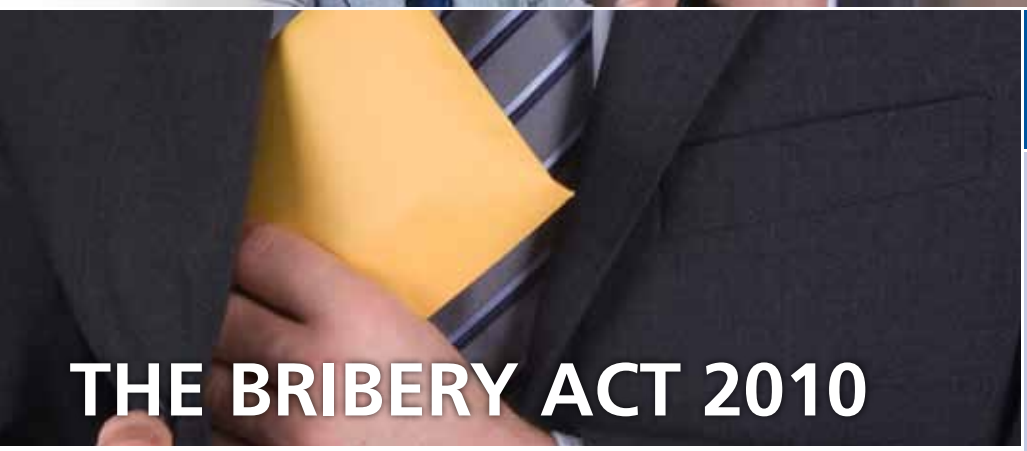

THE BRIBERY ACT 2010

The Bribery Act 2010 came into force on 1st July 2011, so we wanted to remind you of the importance of implementing a Bribery Policy and procedures. It is now an offence if a company fails to show adequate procedures to combat acts of bribery, namely;

- Offering, promising or giving a bribe
- Requesting, agreeing to receive, or accepting a bribe
- Bribing a foreign official
- Corporate liability for failing to prevent bribery

Based on the guidance published on Bribery Act 2010, we developed the Anti-Bribery and Anti-Corruption policy and a Code of Ethical Conduct. It is not sufficient to just show that you have a policy to avoid prosecution, but you must also show that you have watertight procedures in place. We suggest stringent controls such as periodic risk assessments, maintaining registers for hospitality, gifts, expenses and receipts and appointing a Compliance Officer who may represent the senior management team. All these measures will help companies protect themselves against most future bribery and / or corruption claims.

Some other points to consider;

- The Act covers all companies, partnerships and individuals based in the UK, foreign companies and individuals doing business in the UK and extending the risk to third parties who may have business dealings with UK companies.
- It is essential that all staff are adequately trained in your policy and practises. That they are aware of their responsibilities and what is expected of them.
- Expenses towards business entertainment, gifts and other forms of corporate hospitality are not banned under the Act as long as these are reasonable.
- The Act has enhanced the sentencing powers of the courts by giving wider jurisdictional powers and increasing the maximum sentence for bribery committed by an individual from 7 to 10 years.

For further information and hands on guidance on the development and implementation of Anti Bribery processes, please do email info@alternative-solutions.org.uk.

HUMAN RESOURCES - SUPPORTING YOUR BUSINESS

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AGENCY WORKERS REGULATIONS 2011

The Agency Workers Regulations come into force from 1 October 2011. According to the guidance published, agency workers must be treated equally on basic working and employment conditions as if they had been employed directly to do the same job. Basic working and employment conditions include basic pay, bonus, commission, holiday pay, shift allowance, overtime.

The qualifying period for most rights is 12 weeks but for a few these rights are effective from day one. Agency workers have a right to access collective facilities such as canteen, company car park and job vacancies from their first day at work and the employer is responsible to ensure compliance in this regard. The agency will be responsible to ensure that the workers have equal basic rights (pay, holiday, etc.) provided the employer has furnished relevant information to the agency. Employers must share information with agencies on an on-going basis, and more specifically at the time of pay rises, bonus payouts, etc.

Agency workers who consider that they have been subject to less favourable treatment can bring a claim at an employment tribunal within three months of the breach.

MODERN WORKPLACES CONSULTATION

The Government is consulting on changes to employment law at work.

Issues being considered include making parental leave more flexible, changes to Working Time Regulations. Another issue being consulted on is to require employers who lose an equal pay claim at an employment tribunal to carry out and publish an equal pay audit. The consultation is open until 8 August 2011.

NATIONAL MINIMUM WAGE RATES

From 1 October 2011, the following rates will apply;

- Apprentice Rate will increase from £2.50 to **£2.60**
- Workers above school leaving age but below 18 years of age, the rate will increase from £3.64 to **£3.68**
- Workers between the age of 18 and 20 years, the rate will increase from £4.92 to **£4.98**
- Workers aged 21 years and above, the rate will increase from £5.93 to **£6.08**

PENSIONS – AUTOMATIC ENROLMENT

From 2012, employers may be required to not only enrol eligible staff into a pension scheme, but also make minimum contributions.

Eligible staff will be over 22 years of age but below the state pension age, earn more than £7,475 per year and are not already in a suitable pension scheme.

CASES

ASDA STORES LTD V COUGHLAN [2011]

This case highlights the range of reasonable responses in case of fair dismissals.

The Claimant had 21 years' unblemished, continuous service with the company and was dismissed for gross misconduct as he was found to have cannabis in his locker at work. While the Tribunal agreed that the employee's behaviour amounted to gross misconduct, it held that the Claimant was unfairly dismissed on the grounds that the Respondent did not give sufficient weight to its own alcohol and drugs policy, which provided for treatment and support in dealing with such problems. The unfair dismissal claim was on the grounds of his personal mitigation – length of service and clean disciplinary record, his medical condition and that of his partner which caused him stress. This was not considered by the employer. The EAT held on appeal that the dismissal was fair and that the dismissal fell within the range of reasonable responses.

PACEY V CATERPILLAR LOGISTICS SERVICES [2011]

This case emphasises the need for companies carrying out disciplinary proceedings to ensure fair and reasonable investigation before making any decisions.

The Claimant suffered a back injury at work and was certified unfit by the employer's occupational health doctor and subsequently by his own GP. The employer's insurers collected surveillance footage showing the Claimant carrying out activities that might lead to a conclusion that he was fit to return to work. The Claimant was then suspended pending investigation for falsely claiming company sick pay. The employer also wrote back to the GP with some more questions but without providing the video evidence. The tribunal held that the Claimant had been unfairly dismissed on the basis that the employer failed to get an expert opinion on the video footage itself and that the questions to the GP were merely to be able to 'justify' the dismissal.

THE EAT DECIDES THAT TRIBUNALS HAVE NO POWER TO DIVIDE LIABILITY

This case emphasises the need for companies carrying out disciplinary proceedings to ensure fair and reasonable investigation before making any decisions.

In this case, the claimant had brought a race discrimination claim against a number of respondents including: a company which had not shortlisted her for a job; the London Borough of Hackney, which funded it; the company's director; and its executive committee. An employment tribunal upheld the claims and found that the claimant had been victimised by all of the respondents, either because they had aided the discrimination or because they were responsible for the potential employer. When deciding compensation, it decided that the total amount (over £421,000) could be collected from any one of the respondents or from any of them in different amounts until the total debt was paid. Hackney (which had the biggest pockets) appealed to the EAT on the ground that the tribunal should have divided the amount of compensation amongst the respondents. The EAT rejected the appeal and stated that there cannot be a division of compensation; all the respondents were liable to the claimant for the full amount (provided she did not receive the full amount more than once).

Over the last couple of years the number of cases reaching Tribunal has hugely increased, it is thought to be by more than 50%. Many of you may have experienced this for yourselves, the increases being driven by disputes about equal pay, unfair dismissal, age, sex, race and disability discrimination.

With this being high on the agenda, we are able to offer our clients with not only hands on consultancy but also, an insured/legal expenses cover of up to £75,000 per claim.

For further information please contact
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MCKIE V SWINDON COLLEGE [2011]

Employers have a responsibility for duty of care towards their ex-employees especially when writing to their current employers with serious allegations.

The Claimant was given an excellent reference when he left Swindon College in 2002. He accepted a new position in 2008 and his role involved making site visits to Swindon College. The HR Manager of the college sent an email stating that they would not be able to accept the claimant on their premises due to safeguarding concerns. These concerns were not raised in the references and also there was no investigation into the allegation as according to Swindon College, the Claimant left before the investigation could be initiated. The Claimant was subsequently dismissed by the new employer. The Claimant successfully brought a case of negligence against the College and this emphasises the liability on employers in respect of references about ex-employees.

WILLIAMS & OTHERS V BRITISH AIRWAYS PLC [2010]

A number of pilots brought in a claim against British Airways on annual leave entitlement.

This case has been referred to the ECJ for a ruling as to what extent the Working Time Directive specified what workers on annual leave were entitled to be paid. The preliminary opinion on the case is that flying allowances that are part of the pilots' normal pay must be paid at the time of annual leave along with the basic pay. Though a decision on this is awaited, employers who currently pay only basic pay during annual leave may now need to revisit whether this is appropriate.

SHEFFIELD CITY COUNCIL V NOROUZI [2011]

The employer was held responsible for acts of racial harassment and indirect discrimination carried out by third party.

The Claimant, an Iranian, worked in a care home for troubled children. One child repeatedly mocked the Claimant's accent and racially abused him. He subsequently went on sick leave and claimed harassment and indirect discrimination. The employer was aware of the problems and had not acted to prevent the behaviour and hence was found liable for third party racial harassment.