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HR Winter Quarterly Update



HR UPDATE

Managing Staff Through Tough Times

It's been a tough few years for most businesses and it seems that 2012 will see even greater challenges if economic forecasts are to be believed. The natural instinct is to drive the business onward and upward - expecting those that work for us to do the same. The tendency is to put plans and processes in place to ensure efficiency; to become more stringent about absences and what staff do within work time; and to become more target focussed. All of this is perfectly understandable and appropriate – after all the people in the business all need to be paid for the work they do.

It is important to remember that just as businesses are going through a tough time, so are a lot of people, with the increased costs of living and possible unemployment of a partner. Additionally, you may have already had to implement reduced hours or a pay freeze for a year or two.

So yes, do expect the best from your people, but also retain sensitivity. Take time to understand their circumstances. How can you allow flexibility within your current structures and arrangements? Communicate with them regarding the position of the business, what you are doing and why. In so doing you will retain their support and their best endeavours through the ongoing tough times.

Legal Update

In November Business Secretary, Vince Cable, announced proposals for sweeping changes to employment law. These proposals, which will be subject to public consultation, include:

- Introduction of “protected conversations”, i.e. a method by which an employer can have an off-the-record discussion with an employee, although it is not proposed that this will extend to discriminatory acts
- Introduction of a simplified form of compromise agreement, to be renamed ‘settlement agreement’

- An increase of the qualifying period to bring an unfair dismissal claim to two years of continuous employment
- Reducing the period for collective redundancy consultation to 60 (or fewer) days
- The ‘modernisation’ of maternity and paternity rights
- Removal of breach of an employment contract as a relevant breach for a whistleblowing claim
- A ‘rapid resolution scheme’ enabling simple claims to be settled within three months
- Compulsory mediation of all disputes through ACAS before a claim can be brought
- Financial penalties (payable to the Exchequer) on employers for breach of employment rights; and
- A fundamental review of the rules of procedure of the Tribunals inclusive of judges sitting alone on unfair dismissal claims.

Expect further updates on these areas as the details unfold.

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CASE STUDIES

Bribery Act

The bribery act is just over a year old, but legal history was recently made

when a London court clerk became the first person convicted and sentenced to 3 years imprisonment under the Bribery Act 2010 for a £500 bribe. Mr Munir Patel was sentenced to three years for bribery and six years for misconduct in a public office following his admission of one count of bribery. He admitted accepting £500 to avoid putting details of a traffic summons on a court database. The prosecution believe he earned a further £20,000 by helping 53 offenders.

In sentencing him the judge told the defendant his offences were a “very substantial breach of trust” and that a “justice system in which officials are prepared to take bribes in order to allow offenders to escape the proper consequences of their offending is inherently corrupt and is one which deserves no public respect.”

Certain commentators have felt that the authorities have missed an opportunity. The news of the first successful conviction under the Act being a high profile corporate conviction for failing to prevent bribery has been lost. Some say that focusing on an individual and a fairly small bribe has sent the wrong message – that the system and the courts are more concerned with stopping misconduct in public office rather than changing any perceived ‘bung’ culture of British businesses and foreign companies operating in the UK.

The sentencing of Mr Patel can be seen as a useful steer on the courts’ likely hard nosed attitude to punishing those found guilty of a bribery offence under the Act. Three years for accepting £500 certainly sends a strong message. Corporates who are found guilty of bribing another, accepting a bribe or failing to prevent a bribe being paid by someone associated with them, can expect similarly robust treatment especially

where they have failed to self-report to the Serious Fraud Office or to co-operate with an investigation. Whilst corporates, as legal persons, cannot be sent to prison, directors and other senior officers who are involved can. Companies can also be subject to unlimited fines and barred from tendering for public sector contracts should they be found guilty of a bribery offence.

This conviction and sentence highlights the need for companies to consider the risks they face and to put in place proportionate policies and procedures designed to prevent bribery. Failing to do so exposes companies to substantial reputational risks and the very real chance of a criminal investigation. Companies cannot be complacent and should not take heart from the case of Mr Patel; the SFO has many corporate investigations underway and it is only a matter of time before the first high profile corporate conviction is secured.

Wrongful Dismissal - Employment terminates on payment in lieu of notice

An employee brought breach of contract and wrongful dismissal claims in the High Court against his former employer. The employer wrote to the employee terminating the employment with immediate effect under the payment in lieu of notice (PILON) provision in the employment contract and paid the employee in lieu of his notice period eight days later. The High Court held that the PILON clause provided an alternative method of termination to the three month notice period. However, the

termination did not take effect until the employee had been advised that the amount he had been paid was actually his PILON.

Payment in lieu of notice can automatically terminate the employment contract if the provisions of the contract stipulate as much, even if the employee is unaware of the payment at the time.

The Court of Appeal held that, on a proper construction of the contract, the termination was effective when the employer transferred the money to the employee’s account, even though they had not informed him of it at the time. The PILON expressly stated that payment terminated the contract and there was no need to imply a term that it was only effective if the employee was informed of it.

Employers should bear in mind that there is a difference between dismissal under common law, as in this case, and the statutory ‘effective date of termination’, which applies in unfair dismissal claims, where the employee must have knowledge of his dismissal. Under contract law, the parties are free to agree a method of termination without notice (*Societe Generale v Geys*, Court of Appeal).