



Raworths LLP Employment Newsletter July 2007

Smoke gets in your eyes? Not any more

Just a reminder that the smoking ban in England came into force on **1 July 2007**. The legislation makes it a criminal offence to smoke or permit smoking in any work place that is “**enclosed**” or “**substantially enclosed**”. This means that vehicles need to be smoke-free if they are used to transport members of the public or they are used in the course of paid or voluntary work by more than one person. Remember that all smoke-free premises and vehicles need to display no smoking signs from **1 July 2007**. PDF signs can be found at:-

www.smokefreeengland.co.uk/resources/guidance-and-signage.html

You may also want to introduce a smoke-free policy to ensure that your employees are aware of the new law and to highlight that they now work in a smoke-free environment. ACAS has provided a guide as to what to consider when drawing up a policy on smoking at work which includes the following:-

- a preamble giving the reasons for the policy. For example, “This policy has been developed in consultation with workers and their representatives to help provide a healthy, safe and comfortable working environment”;
- a statement that the policy complies with all the relevant legislation;
- a statement that the policy applies to workers at all levels;
- the name of those responsible for implementing and maintaining the policy;
- information about arrangements for smokers. For example, smoking outside the premises;
- how the organisation will deal with the non-observance of smoking restrictions;
- a statement that the policy applies to all visitors and customers.

Dads to take Maternity Leave?

The Department of Trade and Industry has issued a consultation paper on changes to Statutory Paternity Leave and Pay which one intended to be implemented in two years time.

Under the proposals it is possible for mothers to pass some of their Statutory Maternity Leave to fathers if they wish to return to work during Ordinary Maternity Leave or Additional Maternity Leave.

The new scheme will allow fathers to “self-certify” that their child’s mother is returning to work early and passing on her maternity rights to him. The father will be required to give eight weeks’ notice of this to his employer.

Consultation on this proposal is taking place so watch this space as to whether it is accepted.

What is meant by “the same” job?

It is a statutory right that mothers returning from Ordinary Maternity Leave (the first 26 week period) are entitled to return to the “same job” as the one they left.

In the recent case of *Blundell-v-St Andrew’s Catholic Primary School*, the Employment Appeal Tribunal (EAT) considered what was meant by “the same” job.

The employee (Mrs Blundell) was a teacher at a primary school in which the teachers typically rotated classes every two years. When she commenced her maternity leave, she was teaching the reception class. On her return, she was allocated to teach Year 2. Mrs Blundell argued she was not returning to the “same job”.

The EAT said that it was necessary to consider three factors when comparing the old and new job. These were:-

- the **nature** of the job;
- the employee’s **capacity** for example considering whether the employee’s status had changed;
- the **place** of work.

The EAT concluded that Mrs Blundell was employed as a primary school teacher and she returned to work as a primary school teacher. She had therefore returned to the “same job”.

Monitoring Employees

A recent case at the European Court of Human Rights (ECHR) has confirmed that an employer cannot monitor the extent of an employee’s personal internet usage, e-mails and telephone calls without the employees being aware or obtaining permission. In this case, the employer had no policy in force for monitoring employees and the employee was given no warning that her communications would be monitored. It was confirmed that such action would be a breach of an employee’s right to privacy.

It should be noted that this case concerned a **public** sector employee. A **private** sector employee would not be able to claim under the Human Rights Act 1998 but could bring a claim under the Data Protection Act 1998 (DPA) or the Regulation of Investigatory Powers Act 2000 (RIPA). Nevertheless, this decision will affect the private sector as courts including Employment Tribunals must interpret the DPA or the RIPA, in accordance with the ECHR.

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