



RAWORTHS EMPLOYMENT NEWSLETTER December 2005

Beware of Christmas Parties !

Apart from the obvious effects of over-indulgence (loss of production due to "illness"), ensure that your employees are fully-aware of what is and what is not acceptable behaviour or you may be on the receiving end of a Tribunal claim for sexual harassment at the start of the New Year!

In addition, the case of *Judge-v-Crown Leisure Limited 2005* has thrown up a new potential claim. In this case at an office Christmas party, an employee had been told by a director that his salary would be increased. (I can picture the scene now, a glass of red in hand, a santa rather than a scrooge moment!) The promised increase didn't materialise and the employee resigned claiming unfair dismissal. Luckily for the company, the court decided that this had not created an express variation to the terms of the contract but was merely said "*in the convivial spirit of the evening*" bah humbug !

The Civil Partnership Act 2004

This comes into force on 5 December 2005 allowing the registration of same sex partnerships, giving statutory rights and obligations similar to those of a married couple. Employers will need to recognise that civil partners will be entitled to access to the same employment benefits – as spouses (if offered) for example life cover and medical cover. Furthermore, the law makes it unlawful to discriminate against a person because they are in a civil partnership. Employers are advised to ensure that the individuals are not discriminated against/harassed in the workplace because of their sexual orientation, should the fact of them being in a civil partnership become known, as an employer can be vicariously liable for such acts of discrimination.

As a brief guide:

1. Ensure your compliance with the Data Protection Act 1998, when keeping records regarding civil partnerships.
2. Review your benefits and ensure they are not discriminatory. Offer the benefits to civil partners, where appropriate.
3. Ensure your Bullying & Harassment, Equality & Diversity, Disciplinary and Grievance policies and procedures are up to date and that all employees are aware of their rights and obligations under these policies.

Work and Families Bill


In October 2005, the Government produced its initial proposals regarding this Bill. The main issues are as follows:-

- The extension of statutory maternity pay (SMP) and maternity allowance (MA) from six to nine months from April 2007.
- Extending fathers' rights to paternity leave (the view is that they will be able to take up to six months' leave, three months of which will be paid, if the mother returns to work at the end of her first six months' maternity leave.)
- Extending the period of notice for return from maternity leave from 28 days to eight weeks.

A further proposal of interest/concern to employers is that of preventing bank holidays being included in the annual leave entitlement which would increase the annual statutory holiday entitlement from 20 to 28 days!

“Personality Dismissal” – This is good news !!

In the case of *Perkin-v-St George’s Healthcare NHS Trust* (Court of Appeal Decision), the employee was required both to manage a number of employees and to co-operate with the same level of management as himself and above. Difficulties arose because of the employee’s personality, management style and relations with other managers. He was dismissed as a result. The Tribunal found that he was dismissed because of his conduct which amounted to one of the five fair reasons being some other substantial reason. The dismissal was procedurally unfair but the Court held that the employee had contributed 100% to his dismissal. This decision paves the way for employers to dismiss employees with difficult personalities even when there are no technical, performance or misconduct issues. This can only be good news for employers!

Health & Safety In association with Strathmore Services Limited	
The truth about ladders	

Recent reports in the general press may have given the impression that ladders are “banned” in the workplace – but is this true? The new Work at Height Regulations 2005 require that ladders should only be considered where a risk assessment has shown that other more suitable work equipment is not appropriate. Ladders are commonly used for short duration tasks of low risk, where the layout of the workplace restricts access and the use of other types of work equipment. Schedule 6 of the Regulations states “*every employer should ensure that a ladder is used for work at height only if a risk assessment under Regulation 3 of the management regulations has demonstrated that the use of more suitable work equipment is not justified because of the lower risk and –*

- a) *the short duration of the use; or*
- b) *existing features on site which it cannot alter”*

This means that you must make a risk assessment of the work at height and you must consider other, more suitable, work equipment. Only if the risk assessment identifies other more suitable equipment cannot be used, taking into account the above criteria, will it be acceptable to consider the use of a ladder.

If you want to know more about how to assess the risk involved in work at height, please contact Ian Lynch, Health & Safety Adviser at Strathmore Services Limited of Harrogate on 01423 530350. E-mail: safety@strathmore.co.uk.

If you have any specific employment questions relating to your business, please contact:
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