



## RAWORTHS EMPLOYMENT NEWSLETTER October 2005

### Employment Practices – Data Protection Code

You will be pleased to note that this is now available in one complete volume, providing guidance for employers dealing with data protection issues affecting their employees. The down side is that it is nearly 200 pages long! Failing to become familiar with it, however, may result in an employer not complying with the law. The code should be followed by every employer dealing with recruitment selection, employee records, monitoring (e.g. e-mails at work) and medical information. There is a supplementary guide to the code which sets out good practice, frequently asked questions and a quick guide for small businesses.

The publishing of the code coincides with the creation of a "Regulatory Action Division" which promises to take a tough line with employers who don't take their obligations under the Data Protection Act seriously. We advise reviewing your data protection practices and procedures and if you don't have any, devising some. We are, of course, happy to help!

### Employment Statistics – Grievance and Disciplinary Procedures

Butterworths have carried out a survey into grievances and discipline in the workplace. The research found that one in four employers has faced an Employment Tribunal claim in the past two years after disciplining an employee and one in five has faced a claim after an employee has raised a grievance (this will obviously rise with the introduction of the Statutory Grievance Procedures and the requirement for an employee, in certain circumstances, to put in a grievance to their employer before going to an Employment Tribunal).

Interestingly, 98% of the employers surveyed had written grievance procedures and 50% (approximately) had changed their grievance and disciplinary procedures to comply with the changes which came into force in October 2004. Reassuringly (from our point of view!), the most commonly sought advice on such procedures was from external lawyers.

### Fixed-Term Contracts

A fixed-term contract is a contract which either lasts for a specific period of time; lasts until a specific job/task is completed or lasts until the occurrence or non-occurrence of an event. Examples are: cover for maternity leave; the completion of a building project and the failure to obtain further funding for a particular position. Generally, those employed on fixed-term contracts have the same employment rights as those on permanent contracts. The big difference is that fixed-term contracts are usually for a short period of time and if the fixed-term worker does not have a year's service, they can't claim unfair dismissal. However, those who are employed on a series of consecutive fixed-term contracts, will gain continuity of service if collectively the contracts last for over a year.

Rather curiously, the law regards the expiry of a fixed-term contract as a dismissal. The employer has to have a *reason* for not continuing with the contract which can't just be that it has expired. Finally, don't forget that if an employer is not renewing a fixed-term contract, they have to follow the Statutory Dispute Resolution procedures (see the November 2004 Newsletter. If you don't have a copy and want one, please contact us).

## Disability Discrimination – the latest

Payments by employers to victims of disability discrimination at work rose by a record 89% last year! Awards amounted to £6.2m. Tribunals are awarding more for injury to feelings and are also looking, quite generously, at future loss of earnings. For example, a court usher aged 57 won £206,415 in compensation against Greater London Magistrates Courts Authority who failed to make reasonable adjustments for her disability after medical evidence that the chronic pain in her feet was made worse by standing or walking for several hours at a time. The award took into account her loss of earnings until retirement (eight years!) as they deemed her unlikely to obtain future employment.

## Religious Discrimination

There have been very few successful cases under this new law. However, its early days! There *has* been a reported 600% increase in racially-motivated crime following the terrorist attacks in London. This will, inevitably, have a knock-on effect in the workplace. It is important, therefore, to ensure that your bullying and harassment policies can cope with the possibility and, coupled with the rise in disability discrimination cases, we advise a training/information session with all employees.

Health & Safety In association with Strathmore Services Limited	
Using Contractors	



The use of “contractors” is common practice throughout business and industry. Companies habitually engage self-employed associates or contractors to carry out work for them at their premises. For example, cleaning – windows, general offices; telecoms and IT installations; general premises maintenance and plant maintenance – escalators, lifts, air conditioning, plumbing, electrical etc. Where this is the case, the employer (i.e. the business that engages the contractor) has a duty for the health and safety of “*people who are not their employees*” (Section 3 of the Health & Safety at Work etc. Act 1974).

This means that the business must take reasonable steps to see that the contractor and/or his workers are safe whilst at work on his/her premises and, of course, that the contractor does not put any other person at risk when working (e.g. your employees!) If an accident were to occur, it is possible both employer and contractor could be held liable. It is essential, when selecting contractors, for employers to satisfy themselves that any contractor engaged by them to carry out work is competent to carry out the work; has made a risk assessment of the work and has a safe system of work in place. The prudent employer should check to see that any contractor engaged in carrying out work is doing so safely and within the current health and safety standards.

If you wish to discuss any aspect of the above, please contact Ian Lynch, Health & Safety Adviser at Strathmore Services Limited of Harrogate on 01423 530350. E-mail: [safety@strathmore.co.uk](mailto:safety@strathmore.co.uk).

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

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