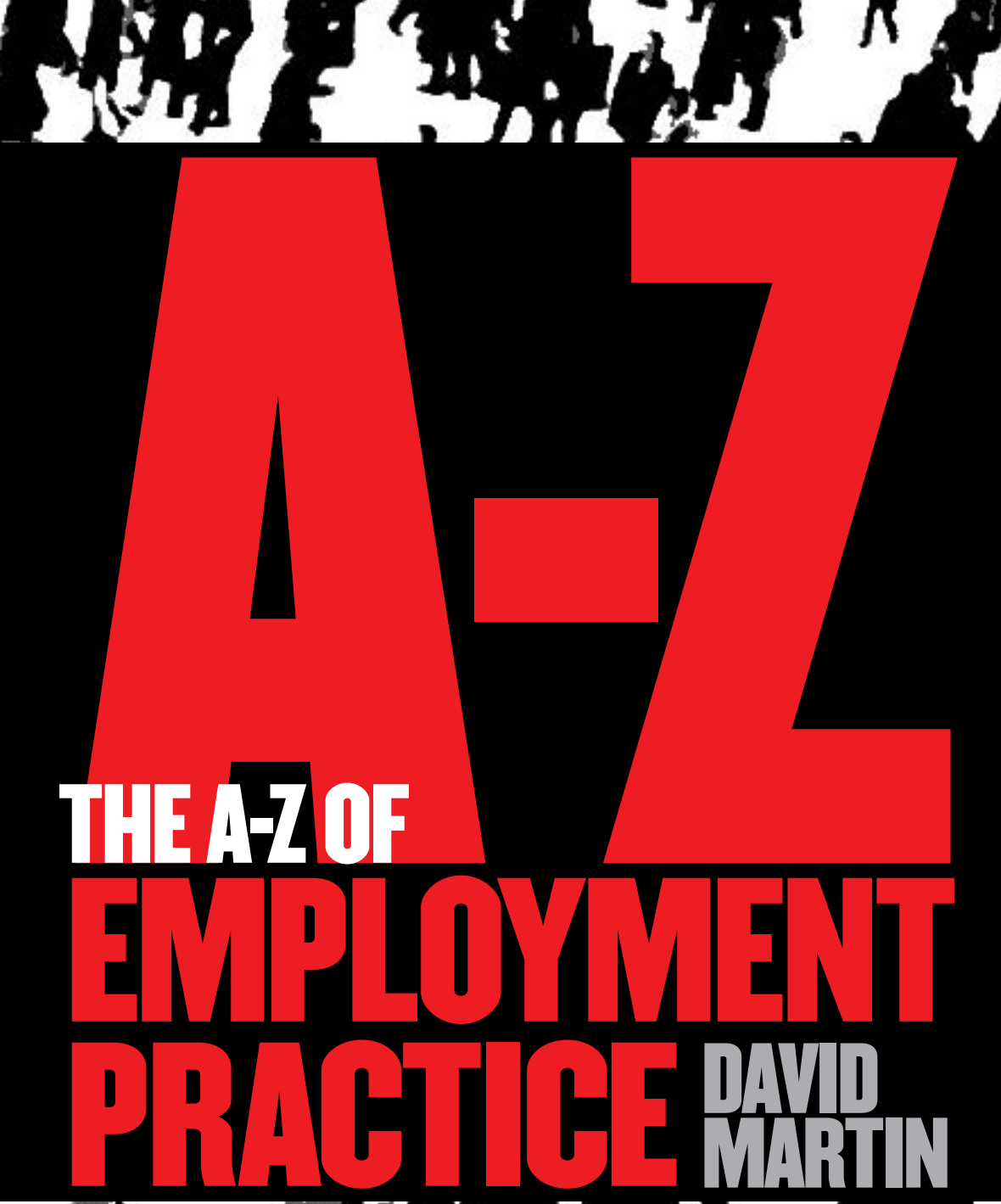

A-Z

THE A-Z OF EMPLOYMENT PRACTICE

DAVID MARTIN

Inside front cover

The A-Z of Employment Practice

David Martin

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As a Director & Secretary of one of the top 250 listed PLCs for nearly 10 years, David was responsible for a range of disciplines – including personnel, property and insurance as well as statutory and legal requirements and corporate/internal communications (three of his annual reports won national awards).

Following a takeover, he founded and has run for the last 20 years his own consultancy – Buddenbrook – carrying out various projects for a range of clients, large and small. He is an employer's representative for the panel of members for the Employment Tribunals and a member of one of the Registrar of Companies committees.

He is a regular seminar/conference speaker and is author of over 35 books including two international best sellers 'Tough Talking' and 'Manipulating Meetings' (and three other titles for Pitman/IoD), two employment law/practice updating manuals for Gee's Professional Publishing imprint – 'Employment letters and procedures' and 'Employment policies and handbooks'. He is series editor for the Institute of Chartered Secretaries 'One Stop' series for which he wrote the Company Secretary (now preparing its 4th edition), Director, Meetings, Personnel (2nd edition), Property, Customer Care, Communication and Profit Management titles, and co-wrote (with John Wyborn) Negotiation.

A second edition of his title 'The Company Directors Desktop Guide' is now available from Thorogood.

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Preface

This book seeks to assist employers to find a safe route through the myriad legal requirements that have created what must appear to some to be a tortuous maze. The seemingly impenetrable hedges of this 'employment relationship' maze have been growing over the last 40 years and have forced a 'quantum shift' from that of 'master:servant' to that akin to partnership. Those who feel 'partnership' is too strong a description might do well to ask themselves the question 'how do I achieve what I want to achieve with my Organisation without my employees?'

Nothing can be achieved without people. Good performers are invaluable and can help maximise such achievements – poor performers cannot. The challenge for employers will increasingly become how to create – and above all retain – 'good performers'. Positively embracing the rights now largely legally required can help. After all the only question an employer needs to ask themselves (and answer it honestly) is 'if this were being done to me rather than me doing it to my employee would I like it and think it fair?'. If the answer is 'no' then perhaps a different attitude would be preferable – the 'doasyouwouldbedoneby' principle. Experience of sitting as a member of the Employment Tribunals for the past ten years suggests that if it had been used, around 20% of cases might not have been brought. To gain and retain good performers we need good treatment – an investment that many employers are content to make since they know it will be repaid in improved customer relationships and increased profits.

That employer: employee relationship

Sitting in tribunals as well as providing a consultancy service for 20 years I am constantly surprised by the number of employers who fail to provide their employees with even the barest outline of a contract of employment or written terms, let alone other contract documentation – for example a disciplinary procedure, a Dignity at Work or equal opportunities policy, a safety policy and so on. Not only is a failure to provide such written terms a breach of employment law of long standing, but also it negates the essential ingredient of a good relationship – that each party should know what the other expects and will provide. After all, one would rarely continue a relationship with a supplier valued at say £100,000 over a 5 year period without having some form of contract, yet many employ people on £18,000 a year (and thus a 5 year cost of £100,000) – and sometimes much more – without anything in writing.

Lacking a contract leads almost inevitably to dispute and argument – both of which detract from efficiency and productivity – and reduce profits. This is particularly important regarding disciplinary matters not least since research indicates that employers who do not have effective disciplinary procedures are far more likely to lose tribunal cases.

Other aims

1. To provide detailed and practical advice more on a 'how to do it basis' rather than 'why it is required'; and
2. To provide a blueprint for setting in place a personnel service suitable for even the smallest employer at the lowest cost in time and money.

Since the book is alphabetically arranged in an 'expanded index' format it is literally the A to Z of Employment Practice so that the reader should be able to find instant guidance on the particular point in question.

Employment practice governs the relationship between an Organisation using a provider of work and the providers themselves. Although we use the phrase 'employment' law and practice it is important to realise that

in some cases a person who has rights under what is referred to as 'employment law' may not be an 'employee' but may nevertheless have rights similar to those enjoyed by employees. All employees are workers but not all workers are employees.

The 'moving' legal challenge

Regardless of whether a person is an employee or a worker however, managing – or preferably leading – people effectively is a key strategic task in every Organisation and those performing the task, need to be aware of the body of employment laws, which is one of the fastest growing and changing areas of law in the UK. It is also very important to appreciate that part of the reason for these changes is that there are 50,000 employment tribunal (ET) cases each year, plus around 1,000 employment appeal tribunal (EAT) hearings and some of these judgements, whilst they cannot change the law, may change our understanding of the law – which amounts to virtually the same thing. I can use five tribunal decisions to demonstrate how our understanding of the law can be altered:

1. In *Baird Brothers (Formwork) v Bryne* the EAT stated that a person being neither an employee nor running a business but performing work of a personal service nature had to be paid the equivalent of four weeks holiday per year. (This case may be reviewed by the Court of Appeal.)

2. In *Brown v Kigass Aero Components* the EAT held that even though an employee was sick for the whole holiday year he was still entitled to four weeks paid holiday (provided he asked for it).

3. In *Matthews v Kent & Medway Towns Fire Authority* the EAT held that an employer could give 'less favourable treatment' to retained (part time) firefighters compared to their full time colleagues despite them performing what most people would regard as identical services and despite the requirements of the Part Time Employees (prevention of less favourable treatment) regulations.

4. In *Landeshaupstadt Kiel v Jaeer* the European Court of Justice held that time spent by a doctor asleep or resting but on call in a hospital was working time and thus had to be paid for, even though he was not working whilst resting.

5. Conversely in *Al-Azzawi v Haringey Council* the EAT held that because Haringey ensure all recruits and employees attend anti-discrimination and diversity training, that the Council made a colleague apologise and disciplined him when he referred to Mr Al-Azzawi as a 'bloody Arab' they could not be held liable for racial discrimination against him.

Four key 'abilities' for the 21st Century

The adoption of regularly reviewed best practice guidelines is equally important – and these are changing rapidly – as can be seen from the case examples set out above. In addition, there are perhaps four key words that sum up the challenge for employers in the twenty-first century:

Flexibility

Increasingly there are legislative enactments which require employers to provide a flexible approach as part of the work:life balance (or work: leisure balance which may be a more accurate description since to many employees work is a pleasure, an integral part of their life and even provides a substantial part of their social life). A DTI study in early 2004 disclosed that 80% of employees want more time with their family and friends and that more flexible work practices would allow people to take up interests such as sport and learning a foreign language. Presumably flexibility in this context meant a re-arrangement rather than a reduction of hours so that income is maintained. Although those with parental responsibilities for children up to age 6 (18 if the child is disabled) have had the right to lodge a request to work flexible hours for only just over a year, it has already been announced that this right may be extended to those who have caring responsibilities for aged relatives. In addition, many of those not otherwise entitled are pressing to be given such a right. The challenge for

employers is that although it may be relatively easy to grant the first (or first few) such request(s), this could become progressively harder (particularly for employers with relatively few workers) as more request it.

Consultability

There are an increasing number of instances where employers must consult with their employees and within a few years may, if requested by their employees, need to regularise this via the introduction of works councils. One of the themes running through this book is that 'communication is essential'. This may be obvious yet it is often misunderstood. It is very sad that as the means of passing information improves, real communication often worsens. Technology can actually impede the process.

Comparability

Legislation already requires part-timers and fixed term workers who perform jobs that are comparable to full-timers and permanent employees respectively to be given the same rights and benefits as those people. In two further instances – homeworkers and agency staff – similar requirements are to be introduced shortly.

Retention ability

In the UK we have a shrinking working population and a growing skills shortage. Employers need to retain the best skills – good performers – rather than having to replace them. Foundation Degrees published a survey in early 2004 which indicated that 28% of employees planned to leave their jobs. 47% of employees between the ages of 20 and 65 'drifted' into their jobs and 26% said their current job was 'just a way to pay the bills'. Quite apart from the cost of replacing the leavers (and the wastage of time it entails), sourcing and then retaining the better employees (see Keeping the Team) is essential for those that wish to move their Organisation forward. A computer model for the Brookings Institute in Washington demonstrated that 'the most successful organisations are not those that set high profit margins but those that attract and retain the most productive staff'. Employee retention is not just 'good man-management' as an

end – it is the means to better financial performance. As Rhiannon Chapman, human resources expert, commented recently 'there is a close link between staff retention and customer retention. and repeat business is six to eight times more profitable than new business'.

As a management tool, trying to retain the better employees may require a change of attitude on the part of some people and a conscious effort to lead the workforce rather than manage them – 'you manage processes but you lead people'. It is relatively easy to ensure that terms and conditions are conducive to employee retention but the challenge is encapsulated in the need to adopt positively what is required by the previous three key words. The greatest managerial skill needed for the 21st century is to be ready, willing and able to adjust to changing expectations – failing to do so can only mean problems recruiting and retaining the best employees, thereby stultifying the business.

David M Martin

Acknowledgement

I would like to express my thanks and appreciation to John Sunderland, Chairman, Cadbury Schweppes plc not only for permission to quote from that company's Annual Report in the section on Human Capital Management, but also for kindly agreeing to write a foreword for the book. Cadbury Schweppes, a company with which I have had a number of contacts over the years, is renowned for its modern and caring approach to its employees and, since this is very much one of the themes of this book, the relationship is perhaps appropriate.

Foreword

by John Sunderland, Chairman, Cadbury Schweppes Plc

We are proud at Cadbury Schweppes to be regularly listed among the top 10 in the UK's 'Management Today's most admired companies' report. Although it is pleasant to be so recognised, of far greater importance is ensuring that such 'public' perception is reflected in our 'internal' reality. I believe business success is 80% about people and we always strive to give effect to this in our day-to-day dealing with our employees.

These days an ever-increasing amount of the required interaction with, and protection of, employees is legally prescribed and obviously we try to ensure compliance at all times. But leadership and motivation of people does not emerge from pages of legal enactments; good performance and productivity is not generated by tribunal decisions; and adherence to personal and company aims is not earned from political pronouncements. These are all matters which must be created and maintained at and by the sharp end of every business.

The triple themes in this book:

- providing a layperson's view of legal requirements, interlaced with their practical requirements
- demonstrating the essential need for true consultation and communication (and leadership) and benefits to be derived therefrom and
- identifying the greatest challenges for management in the immediate future are both timely and important.

The book's publication is welcome since in the last four years employers in the UK – large and small – have experienced twice as many changes in the employment field than occurred in the previous 20 years. It is difficult for any manager or director to ensure they are up-to-date with such requirements at a time when the penalties for ignorance or failing to comply are increasingly onerous.

This book will be of value to all businesses, particularly perhaps smaller businesses where the director/owner needs to be his or her own personnel or HR manager. David Martin's concept of presenting the contents as an 'expanded index' means that readers can find information on particular subjects virtually instantly, whilst the inclusion of brief tribunal case decisions adds a valuable dimension to guide employers on the Courts' interpretation of the law – and the practical steps that need to be taken as a result.

It gives me pleasure to endorse it – not least the 'doasyouwouldbedoneby' principle – a valuable guide for every manager and would-be leader.

John Sunderland
Chairman, Cadbury Schweppes Public Limited Company

Guidance on using this book

1. The decisions in recent cases quoted here may be subject to reversal on appeal. The contents reflect the author's understanding of the situation as at 1st July 2004. Where it is known that an appeal process is outstanding this has been indicated in the text. It is intended to regularly update this book and if you wish to be advised of new editions please contact Thorogood Customer Services on 020 7749 4748 or complete and return the contact form at the end of the book.
2. Using the 'expanded index' format and seeking to make each item whole in itself, inevitably leads to a certain intentional duplication of content. Cross-referencing to other sections is achieved by displaying relevant section names in capitals.
3. Examples, policies, checklists and letters, etc., are provided as a base for individual use but need to be customised.
4. Statutory figures of 'a week's pay', 'compensation limits' etc., are increased in line with the RPI each 1st February. Statutory benefits (eg. maternity, paternity pay etc.) are reviewed and become effective each April.
5. It may assist to define certain key phrases used in employment practice:

   Audit trail: the name given to the process by which the employer is able to prove receipt and comprehension so that an employee cannot subsequently claim 'I didn't know' or 'I wasn't told'. Thus, each time something is given to an employee they should either sign a receipt or the act should be witnessed by a third party and a note made of the event.

Collective agreement: where a trade union is recognised for negotiating purposes this is usually evidenced by an agreement between employer and union. Such an agreement sets out the basis for negotiations and manner by which they will be conducted etc.

Constructive dismissal: the action by which an employee brings the employment relationship to an end because the employer has carried out an act (or failed to carry out a promised act) which is fundamental to the continuance of the contract OR carries out a series of acts or inactions, the cumulative effect of which makes it untenable for the employee to remain. Although the employee resigns it is regarded as a 'dismissal' forced by the employer's act (or inactions).

Continuous development: change is endemic in modern commercial life and few employees will be able to work without some degree of retraining. Increasingly, particularly within professional bodies, members are encouraged to ensure that each year they commit a number of days off the job to retraining or being coached in new developments affecting their jobs and/or skills.

Counselling service: some employees may be able to withstand work-based pressures and could become subject to medical stress which could lead to a claim against their employer. To counter this employers are increasingly offering – usually bought in and provided by experts in the field – free and confidential counselling services which employees should be encouraged to use. Such provision may mean the employer is not liable for any subsequent stress claim.

Curriculum vitae(c.v.): the detailed description of a job applicant's personal details, education, qualifications, skills, experience and previous employment data which accompanies (or may substitute for) an application form.

Employee handbook: every employer being different, their rules and procedures also vary widely yet employees are required to abide by those rules. Since this could make the contract of employment a very bulky document many employers restrict the

contract to the bare essentials and provide more detail in a handbook. Such a book should be referred to in the contract in order to make it part of the contractual terms. With the rapid change in employee rights and requirements the provision of such a document in looseleaf form so that it can be readily updated is becoming essential.

Exit interview: a meeting held after an employee (who ideally the employer wanted to retain) has decided to leave, to try to determine the true reasons for the resignation on the basis that in such a position the employee (with nothing to lose) might be truthful. Some employers ask leaving employees to list three items which they feel might make the employer's organisation a better place in which to work.

Familiarisation: the structured process (often referred to as Induction which is only part of the process) by which a new recruit becomes an established and experienced employee. It may be best achieved by providing mentors and manager with a checklist with, in some cases, a requirement to recheck items and training already provided to ensure sound knowledge.

Family friendly: the phrase given to the movement which seeks to make work a more accessible environment for those who have family commitments. Essentially, it requires employers (mainly via what are now legal obligations) to pay, largely on behalf of the State, certain benefits and to try to be flexible about employees' hours, starting and leaving times etc. for those who are responsible for young children etc.

Fixed term employee: anyone who works under a contract which is not open ended (that is the termination date is fixed rather then dependent on notice under the contract being given by one party to another at an indeterminate future date). Under current legislation, those who perform comparable jobs on a fixed term basis to those working on a normal contract basis must have the benefit of similar terms (that is they must not be treated 'less favourably than') a permanent employee doing a similar job.

Gross misconduct: an act which so fundamentally destroys the trust of the employer in the employee that they can regard the employee as having broken the contract and can thus bring it to an immediate end by summarily dismissing the employee (that is dismissing without notice required by the contract or under statutory requirements whichever is longer).

Guarantee payments: the State stipulates that where an employee is 'laid off' (forced idleness as there is no work) and unable to earn their normal wage (possibly as an alternative to being made redundant) the employer must pay them for up to five days each quarter at a daily rate which is reviewed each year.

Hazard reporting: as part of a risk assessment process, employees can be encouraged to report hazards which they identify providing the employers with an opportunity to address the hazard.

Headhunters: with senior and/or specific one-off roles it may be preferable, rather than attempting recruitment by advertising a job and sifting the applicants, for organisations specialising in headhunting to be retained. They attempt to identify people (who were not necessarily looking for a job) who might fit the requirements and approach them to see if they might be interested.

Job description: a written statement of all the facets of a job accompanied (in some cases) by required levels of achievement to be attained by the person performing the job. Ideally, both employer and employee should sign such a statement to evidence their agreement to the requirements.

Material terms: the material terms of a contract of employment are usually regarded as being those relating to the hours to be worked and the remuneration linked to those hours. If there are other important terms (e.g. confidentiality) then provided this is made clear these terms also could be regarded as being material. The importance is that if there is a breach of a material term by the employer, the employee may be able to resign and claim constructive dismissal; or, if a breach by the employee, the employer should be able to dismiss fairly.

Mentor: an established employee, not in direct control of a new recruit but who is available to that recruit for informal, friendly and usually confidential advice, concerning them settling in the environment and/or performing their duties.

Outsourcing: the process by which an employing organisation slims its operations to the essentials by placing responsibilities it perceives to be peripheral to its core operations (e.g. cleaning the premises, security, payroll, etc.) with third parties who charge for the provision of the service. Often the employees engaged on such activities are transferred to the third party's employ.

Part-timer: anyone who works fewer hours than the number of hours normally regarded by an individual employer as 'full-time' is regarded as being part-time. Under current legislation, those who perform comparable jobs on a part-time basis to those working full-time, must have the benefit of similar terms of the full-timer doing a similar job, that is they may not be treated 'less favourably than'.

Performance review/appraisal: the process by which an employee's performance in the job is assessed by their superior ideally in conjunction with the employee themselves. To avoid the process being reduced to a 'criticism' session, it is preferable to focus attention mainly on the future – for example identifying training needs etc. and considering how these can be met.

Person description: a written statement analysing the skills, educational attainments and/or experience believed to be required by the ideal candidate for the vacancy being filled. Candidates' attainments can be compared with the required items to try to obtain a perfect match, or, if not, to identify areas where training may be required.

Pool: when an employer has too many employees for their requirements and needs to make some redundant, they need to identify the area from which the jobs must be lost. Such a pool could be the whole establishment or a part only affected by the downturn which has not affected other parts.

Probationary period: attempting to match an applicant to job requirements can be difficult and few will know how a recruit is likely to perform. Recruits also rarely know how well they have understood the ethos of the organisation they have joined and requirements of the job they have undertaken to perform. It may be best for both parties that the first, say, three months employment will be subject to a probationary period during which time each party can assess the other and by the end of which they should know whether they are likely to be able to continue the relationship.

Pension:

a) occupational – a pension arrangement provided by and possibly part-funded by the employer which an employee can join and contribute towards in order to build a pension for payment in later life.

b) stakeholder – if an employer does not provide an occupational pension arrangement, provision must be made for a stakeholder pension so that an employee has the opportunity to provide for their retirement.

Risk assessment: legally required this is a written analysis of the risks that occur within the workplace. Risks that can be eliminated or reduced should be addressed to this end, but inevitably some risks cannot be reduced. The principle is that by identifying them and bringing them to the attention of the workforce they are put on alert when coming into contact with such risks.

Self-employed: a person who works for (employs) themselves rather than working for an organisation under a contract of employment. The categorisation of a person as being self-employed is not easy. Basically, courts usually state that if there is no 'mutuality of interest' between the parties (employing organisation and worker) then the later may be self-employed.

Short-list: is not only the name given to a process by which the original applicants for a job are reduced to those deemed to be most likely to be successful or who seem best suited for the job, but also to the actual list of such names. Ideally, from the short-list after another interview etc., the successful candidate will be selected.

Works council: under current EU requirements, UK employers, depending on how many employees they have, must, if requested by those employees, set up a Works Council in the near future. There is a specified range of subjects such Councils must consider and membership is by election from the workforce.

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Contents

A

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Absence

Basis for inclusion

Legal requirement

Commercial necessity

Background

The basis of the employment contract is that in return for a set number of hours contributed by the employee, the employer pays an agreed wage or salary. Many employers provide paid contractual leave when an employee is sick – as well as being required to pay Statutory Sick Pay. Inevitably, some employees take advantage and over claim. A system of recording and monitoring absence can help ensure legitimate absence is paid for – and malingering is controlled.

Commentary

Absence is either 'Authorised' or 'Unauthorised' – and both headings cover several categories, all of which need to be identified and procedures devised for dealing with them fairly.

1. Holidays

a) Statutory. Employers must provide four weeks paid HOLIDAY (including paid bank holidays) within their holiday year for all employees.

b) Contractual. Any holiday entitlement in addition to the statutory right should be specified in the CONTRACT with provisions covering the calculation and payment. Clear rules regarding the allocation should avoid any uncertainty regarding entitlement. Each employee's entitlement should be posted in each department and each day taken recorded permanently both there and centrally on the Absence Form (see below).

2. Sickness

Occupational entitlement should be specified in the contract with provisions covering the calculation, payment, relationship with SSP and monitoring. (See SICKNESS).

3. Leave of absence

a) Statutory.

   i) Under the Employment Relations Act 1999, employees who are parents (both natural and adoptive) are entitled to unpaid parental leave of up to 13 (18 if the child is disabled) weeks (see LEAVE).

   ii) Employers must also allow employees a reasonable amount of unpaid time off for 'family emergencies' (See LEAVE).

b) Contractual.

If any other amounts of leave are allowed, or allowed after a probationary period, or set interval, etc., the exact rules for applying, using and returning must be clearly set out.

4. Public service

Employees must be allowed time off with or without pay to carry out various 'public' duties, including:

a) jury service (unpaid, although the employee will usually be entitled to a small allowance and certain expenses from the State).

b) MILITARY SERVICE.

c) serving as justice of the peace, local councillor, member of statutory tribunal, member of regional health authority, governor or manager of a state school, or as a member of a water authority.

Some employers also allow time off, for example, to part-time firefighters and lifeboat personnel etc. (see LEAVE).

5. Statutory rights to paid absence

These include:

- attending ante-natal appointments (subject to production of an appointment card)
- MATERNITY leave (subject to service)
- paternity leave (see LEAVE)
- ADOPTION leave
- to seek alternative work and/or arrange training during REDUNDANCY
- for 16 and 17 years olds who have not attained pre-determined levels of education, time off to attend classes intended to enable them to attain such levels (regulations under the Teaching and Higher Education Act 1998). (See TRAINING)
- to carry out duties for which the employees have been elected

6. Statutory rights to unpaid absence

a) The public leaves referred to above.

b) EMERGENCY LEAVE.

c) Parental LEAVE.

7. Employees absences capable of being Authorised subject to application

a) To act as a witness. Unpaid leave can be given, whether payment is to be made is for individual employers to determine.

b) To undergo medical examinations and/or treatment.

c) To observe religious holidays other than those covered by UK bank and public holidays.

Note: There are only two public holidays in the UK – Good Friday and Christmas Day (both Christian holidays); other holidays announced by the State are bank holidays. With the growth of numbers of those following other religions, this needs to be borne in mind to avoid claims of discrimination on grounds of religious belief (see DIGNITY AT WORK).

d) Where time within, rather than the whole of, the working day is needed. This can be covered by a 'pass out' system where an employee is issued with a signed authority to be absent from work during the working day – such authority being surrendered on return (the time of exit and return being noted, and, if required, pay being adjusted.

8. Unauthorised

Absences other than the above can be described as Unauthorised: for example, under the NATIONAL MINIMUM WAGE regulations, whilst workers must be paid for all time worked at a rate at least equal to the NMW rate, they are not entitled to be paid for time spent on industrial action which is regarded as 'absence'.

Control

For Authorised absences set out above, a form granting authority to the employee to absent themselves (with or without pay) should be completed, and Authorised by the manager. Using sets of self-copying forms individual sheets can record the authority to those involved – the employee, payroll and personnel administration. The copy provided for personnel administration can then also become the origination documentation for the completion of an annual individual absence record.

Absences can be grouped into like categories, with a letter allocated to each (the same letter should be used on the individual attendance record).

Example

A = Annual holiday entitlement. The form is usually required to be completed and Authorised by the department head, at least several weeks in advance of the required leave. (When wishing to take Statutory holiday an employee must give notice of at least twice the length of the holiday – although employers can require longer notice to be given.)

B = Public leave, including jury service, acting as a witness, public service and territorial army training, and periods spent on active forces service following a 'call up'. Again this would usually be completed some time in advance.

C = Medical appointments, ante-natal treatment, redundancy notice interview and training.

D = Maternity leave and long-term sickness, where entitlement to sickness benefit has been exhausted, yet the employee is to remain an employee with continuity of employment pending return.

E = Other Authorised leave (e.g. adoption, paternity, parental and/or family emergency leave).

F = Industrial action.

X = Unauthorised absence.

In each case the supervisor/manager must initial instructions regarding pay/no pay.

ORGANISATION **ABSENCE AUTHORISATION**

Name _____ No _____ Dept _____

A ANNUAL HOLIDAY

Dates of annual holiday _____ number of days from (date) to (date)

B PUBLIC SERVICE

Date of Leave for Public Service (namely)

_____number of days from (date) to (date)

_____days to be paid/not paid (Initial)

C MEDICAL APPOINTMENT

Date/time of leave to attend medical examination _____

_____ time/day(s) to be paid/not paid (Initial)

D LONG-TERM ABSENCE

Date(s) of leave (maternity and sickness)

_____ number of days from (date) to (date) OR

Commencing (date) and expected to last _____(days/weeks)

Payment arrangements (specify) (Initial)

E AUTHORISED LEAVE

Date(s) of leave (parental and family)

_____ number of days from (date) to (date) OR

Commencing (date) and expected to last _____ (days/weeks)

Payment arrangements (specify) (Initial)

F INDUSTRIAL ACTION

Dates applicable

X UNAUTHORISED ABSENCE

Date(s) of absence: from _____to _____ Do not pay. (Initial)

Date _____

Signature_____

Attendance record

In larger organisations employees may be required to 'sign on' (and 'off') either literally by signing an attendance book, or by clocking in, or using computerised attendance recording and access cards. The audit trail then starts with the attendance record and requires justification by means of an Authorised absence form for all 'gaps'. Where gaps are not covered by such a form, the reason for absence requires an explanation.

ORGANISATION **DAILY ATTENDANCE RECORD**

Department _____ Month _____ Year _____

Employees

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

Ames _____

Barking _____

Charles, etc _____

CODE

A: Annual leave, B: Public service leave

C: Medical appointment, D: Authorised absence (long)

E: Authorised leave F: Industrial action

S: Sickness X: Unauthorised absence

Annual Record

All absences whether Authorised (using the above coding) or not (using code letter X) should be entered on an annual record card for every employee, providing an 'at a glance' record of attendance and a control mechanism.

With the benefit of such records, it becomes a simple matter to demonstrate to an employee any kind of 'unacceptable' record, and to support

any required disciplinary action which should of course follow the normal disciplinary procedure of warnings before sanctions (See DISCIPLINE and SICKNESS).

Sickness versus holiday

It can be confusing to discern rights and responsibilities when an employee claims to have been sick whilst on holiday. It is important to make it clear in contract documentation that if a person falls sick when on holiday:

a) they must get a certificate from a recognised medical practitioner

b) their holiday is suspended for the period of sickness. Amounts already paid in respect of the holiday will need to be recovered – but offset by any SSP and occupational sickness benefit (if applicable)

c) the amount of holiday during the sickness should be added to the amount still to be taken.

Access

Basis for inclusion

Commercial requirement

Background

At times employers may wish to restrict employee access to the premises and/or access to 'sensitive' parts of their premises. Such restrictions must be clearly advised so that those involved are in no doubt regarding the requirements. This is particularly relevant to computer suites and to those organisations vulnerable and attractive to terrorists, or to industrial espionage. Electronic access equipment may not only provide additional security but may also provide an attendance record, and even payroll input.

Commentary

Controls over access may be best implemented by a written procedure covering both employees and visitors.

Access procedure

1. Employees access the premises of [the Organisation] using the electronic card keys in the externally sited mechanisms adjacent to the entrances. A personal access card (with an individual number) is issued on employment – and its use is restricted to the particular employee to whom it was issued. The card must be inserted in the control mechanism on every occasion on which an employee enters or leaves the premises.
2. If an employee loses their card this must be reported to the [personnel administrator – PA] immediately and a new card obtained. In the event of third or subsequent replacement cards being required, [the Organisation] reserves the right to make a charge.
3. Non-employees will be directed to reception and will be requested to complete the Visitors' Book, following which each will be given a visitor's badge to be worn at all times in the building and surrendered on leaving.
4. Managers etc., receiving a visitor(s) are responsible for escorting them throughout the visit and ultimately back to reception, for recovering the visitor's badge, and for signing the visitor(s) out.
5. At the end of the day, reception staff will check the status of visitors still on site and make arrangements concerning their exit after reception is locked. The employee responsible will escort such visitors to the night exit, collect the visitor's badge, return it to reception and book the visitor out.
6. Reception staff must keep the Visitors' Book up to date, replacing full pages when necessary, ensuring badges are returned, checking discrepancies, and reporting them to PA.
7. Employees who wish to arrange a site visit for members of their family, or for members of a school or other Organisation, should apply to the [personnel administrator] giving full details of the Organisation, numbers involved, etc. Visits are restricted to one each month, so it may be necessary to book in advance. All members of such a party visiting the premises are subject to the rules that apply

to employees, must keep to the designated routes, wear appropriate clothing and observe all necessary safety and other rules.

8. Children under the age of 12 are not normally allowed in the plant. Employees who require children to attend the plant (e.g. to await the end of a parent's shift) should make arrangements with the [personnel administrator] for the child(ren) to wait in the [specify] Department. Employees are fully responsible for the actions of their child(ren) whilst on the premises (and must sign an undertaking to this effect). The Organisation will accept no liability arising as a result of this concession.
9. Certain statutory bodies have a right of entry to the premises of the Organisation at all times. If a representative of such a body visits, the reception/gateman should contact the [PA] to conduct the inspection. Should access be sought out of normal office hours, reception/gateman should contact [name].

Computer access

The Computer Misuse Act 1990 makes offences of:

- Unauthorised access to computer material (i.e. both hacking and access by Unauthorised users);
- Unauthorised modification of computer material (e.g. the insertion of a time bomb such as the 'Friday 13th' data destruction program); and
- Ulterior intent (i.e. Unauthorised access for the purpose of committing a crime).

Penalties for Unauthorised access (apart from those provided for under the Act which are up to 5 years imprisonment and/or an unlimited fine) may include dismissal for employees.

Case study

In *Denco v Joinson,* the EAT held that an employee was fairly dismissed when he gained Unauthorised access to his employer's computer system (including payroll) even though no purpose, other than curiosity, was the cause and no 'loss' (other than to the integrity of the system) occurred. The EAT added that organisations should make it clear to their employees that Unauthorised use of its computer system carries severe penalties.

A policy/procedure such as the following might be appropriate:

1. Employees may only operate within their own departmental operations and service areas. Access to other areas is restricted to Authorised personnel only. Access to the systems, particularly, but not exclusively, the computer systems, is reserved to Authorised personnel only. Unauthorised access to, or in any way tampering with, any computer system or software, or computer installation (including but not restricted to the items in this rule) will be regarded as gross misconduct and may render the offender liable to dismissal and prosecution under the Computer Misuse Act 1990.
2. All computer records will be backed up daily (or more often if required) with back up stored in (a remote location).
3. Data files altered during daily working will also be backed up daily with back up stored in (a remote location).
4. In no instance should any computer owned or leased by the business be used for playing games or for any purpose other than the legitimate work of the business. Nor shall employees using their computers or electronic equipment use them for such purposes in the workplace. Nor may employees access the Internet (or any other information service obtained via computer access) whilst at work other than with the previous written permission of [a director]. The attention of all employees is drawn to [the organisation] ELECTRONIC COMMUNICATIONS policy.

Breach of these rules is regarded as gross misconduct, the maximum penalty for which under the organisation disciplinary policy is summary (without notice) dismissal.

5. No software and/or disks, etc. other than those owned or leased by [the Organisation] may be used in its computers. All software and disks must be purchased new from recognised and reputable suppliers, backed by a confirmation that all such items are free from viruses, etc., and/or with a guarantee/liability acceptance that, in the event that virus(es) which have caused damage, were present on purchase, the supplier will reimburse losses.
6. Anti-virus programs should be used regularly (specify intervals) to check that all systems, software and disks, etc. (including back-up files) are virus free. Any item found infected must be immediately separated from any networking arrangement, and steps taken to eliminate the virus.

Destruction of data

Since it may be possible to access data, formerly stored on the hard disk of a computer even though the user deleted it, suitable protection (or destruction) must be considered for such disks. This problem becomes more acute in considering the number of personal computers used both in and outside the Organisation – including many which commute with employees.

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Accidents

Basis for inclusion

Commercial necessity with potential legal liability

Background

Each week in the UK there are over 500 major accidents and around 3,000 injuries causing employees to take 3 or more days off work. Although there has been a considerable improvement in workplace fatalities (the rate per thousand fell from 3.6 to 0.9 between 1971 and 1997) the rate has been static since the mid 1990s. In 2002/3 there were 226 deaths at work (down 10% on the previous year) and 142 deaths of members of the public related to the working environment. These figures may be understated since employers are stated only to report about 41% of reportable injuries to their employees at work. Statistics do not reflect the human misery inherent in these accidents and increasingly society seeks to fine both employers and individuals in charge of employers (e.g. directors and managers). Where injury or death is caused as a result of the operation those in charge will increasingly face personal penalties if in breach of the expectations. The average fine in 2002/3 was around £9,000 and the largest was £240,000. Convictions were achieved in 11 out of the 22 cases in which directors and managers were prosecuted. Fines are increasing however. As this book was being written, Thames Trains were made subject to the largest fine ever recorded – £2,000,000 for the Paddington rail disaster.

Risk control

Whoever is responsible for reporting and dealing with accidents, insurance claims etc. must be advised of such incidents as quickly as possible. A comprehensive review of all the operations generating risk assessments

for every activity must be conducted. Although there is an expectation that if possible risks should be removed or minimised, the requirement is actually to identify the risks and bring them to the attention of those likely to be adjacent or susceptible to them.

Procedure

A senior employee should be made responsible for:

a) the preparation of risk assessments in each site; and

b) the reporting of every incident at each site.

Every supervisor and manager should be instructed to notify every incident to that person. All sites must notify the local enforcing agency (if necessary by telephone) and record details of all reportable accidents and dangerous occurrences in an accident book. Written notification to the agency must be made within 7 days of the occurrence using Form F2508 (accidents and dangerous occurrences) or Form 2508A (for work related diseases), both of which are available from local HSE offices. An entry must also be made in the Accident Book (reference B1510 in a format which is compliant with the Data Protection Act) which should be kept at each location.

Following every incident, the appropriate risk assessment(s) should be updated.

The potential cost to the employer for failing to do this could be considerable.

Case study

In *R v F Howe & Son (Engineers) Ltd.*, the Court of Appeal stated 'some safety offences could be so serious that they could lead to fines being levied at a rate that would bankrupt the company'.

Hazard reporting

Employees' assistance in the notification of hazards should be encouraged. Whilst this may generate some unproductive work (e.g. dealing with 'hazards' that reflect more the zeal of reporting rather than real danger), the fact that the workforce has such an avenue open to it, and can be proactive regarding potential hazards may defuse emotive arguments in other forums, apart from its main purpose of avoiding accidents. A supply of Hazard Report forms could be kept in a health and safety folder which, it is suggested, is kept at each workplace.

EXAMPLE OF HAZARD REPORT

To: [Safety Officer] _____ From: Name _____

Date: _____ Safety Rep. for _____
Area

Time:_____ Form number _____

Place: _____

At the above time/place I became aware of what I consider to be an unsafe/unacceptable/dangerous *
practice,*
machine,*
procedure,*
other (specify)*

Comments/additional information_____

_____

Signed_____Date_____

Copies: Safety Committee, Works Manager

* Delete as necessary

Acknowledgement/Reply slip _____ Form no _____

From: Safety Officer _____ To: _____

Date: _____ Time: _____

Thank you for bringing the details set out on this Form to my attention. I am arranging to take the following action _____

_____

Signed _____

Safety Officer _____

Date _____

Copies: Safety Committee, Works Manager

Use of a self-duplicating format should enable the reply to be given as part of the report form whilst retaining the original. Copies can be provided for the Safety Committee, Works Manager or other executive responsible for these matters, as well as the executive responsible for risk management and insurance. Numbering both halves of the form allows for ease of reference and avoidance of misunderstanding as to which hazards have been actioned.

Reportable accidents

Under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1985 and 1995 (RIDDOR) the following accidents must be reported:

- fractures of bones (except in the hand or foot);
- amputation;
- loss of sight;
- injuries requiring immediate medical attention or involving a loss of consciousness;
- acute illness; and
- any accident which involves a person being kept in hospital for 24 hours or more.

'Dangerous Occurrences' include collapse of machinery, failure of a pressure vehicle, electrical failure, explosion or fire, scaffold or building collapse, etc. The 1995 Regulations added a requirement on employers to advise of 'non-consensual physical violence done to a person at work' (which could include the effects of initiation rites, BULLYING etc.) as well as permitting telephone notification of incidents.

Non-reportable accidents

Accidents other than those falling into the above categories are non-reportable. However, it would be wise to enter details of all accidents (no matter how minor) in the Accident Book, and certainly details of all accidents where FIRST AID has been administered should be entered.

For companies who do not have an administration manual or similar instruction book in which the procedure to be followed in the event of incidents can be set out, a General Incident Folder may provide the essential aide-memoir to line/local management for the reporting of both safety hazards and incidents.

Concept

An A4 plastic folder containing a number of forms for immediate use in the event of an incident, held by the local manager/employee appointed to report all incidents to the appropriate person or department.

Contents

- Procedures to be followed
- Incident forms
- Hazard forms (where Hazard reporting of Safety matters is to be made via the same organisational procedure)
- Panic numbers (for management contacts to be advised out of office hours)

- Telephone hotline procedure
- Pre-addressed internal/external envelopes
- Pen
- Re-order slip
- Check sheet for 'correspondent' to note action taken and dates, etc.

It may also be prudent for each 'correspondent' to have or have access to an inexpensive/disposable camera, and to be instructed to take photos of every incident.

Incident procedure

1. Note date, time and report source on form.
2. Visit site of incident and record as much information as possible.
3. If you have access to a camera, take several photos from different angles. If no camera is available, make a sketch of the scene of the incident, including on it all relevant data.
4. Record names of all present.
5. Should the incident involve physical injury to any person, or be such that it appears to involve loss or damage to company property in excess of £5,000 – use the telephone hotline to advise (contact). If the incident occurs out of normal office hours use the Panic number list to advise (contact).
6. Follow any instructions issued by the (contact).
7. Request statements from eye witnesses and any others involved. (See INVESTIGATIONS.)
8. Complete the other information required on the Incident form.

9. Review the information obtained and witness statements taken to ensure that there is, on paper, a realistic view of the events and the incident, such that a third party reviewing the data at a much later date will be able to gain an accurate insight into the occurrence.
10. If a claims checklist is applicable advise those included on the checklist to commence sourcing the information required.
11. Send the Incident Form with all ancillary items, including jottings, witness statements, sketches, etc., within 12 hours of the incident to the (contact). Follow this initial notification with any supplementary information, photos, claim checklists data, etc., as soon as possible.
12. React to, and obtain further information requested by the (contact) and the insurer as requested, assisting with any inspection and subsequent investigation.
13. If incident requires notification under RIDDOR requirements advise the local enforcing agency (by phone) and follow up with written notification within 7 days.
14. Enter into the Accident Book.

Note: It is good policy, even if a telephone hotline is used, to obtain some written record from the 'correspondent' – initial jottings may be of assistance to an incident investigator and thus should be passed through to the 'contact'.

INCIDENT REPORT FORM **URGENT**

Please complete as soon as possible and send immediately to [Contact]- in the event of any injury to personnel, or Company Secretary – in the event of any damage or loss to property, or products, etc.

Dept/Shop/Site _____ Date _____

Report completed by _____ Position _____

Telephone _____

Details of occurrence _____

_____

_____

_____

Time of incident _____ Police informed _____

If Police informed, details of Station/Officer _____

_____

Witness details _____

_____

Organisation contact for further details _____

Other back-up documentation (attached/to follow) Specify _____

_____

OFFICE USE ONLY

Claimable ? YES/NO If YES, which policy _____

Reportable? YES/NO If YES, entered in Accident Book?

Date claim/report made _____

Contact numbers

In all cases of loss, fire or other serious incident out of normal hours where there is injury to an individual or the potential loss seems likely to exceed £5,000, a list of contact telephone numbers of senior management should be provided. The hotline number is to be used whenever there is personal injury (for example to allow instant reporting under RIDDOR) and/or if

the loss or damage is likely to exceed £5,000, and/or if the incident occurs outside normal working hours. The number should be widely advertised.

Out of hours reporting

Out of normal office hours the telephone will be on an answerphone service. Correspondents should be prepared when the message ends to provide the following data:

1. Date.
2. Time.
3. Name of correspondent.
4. Site of incident.
5. Brief description of incident.
6. Injury caused (names and apparent injuries sustained).
7. Damage caused (details of damage with approximate value).
8. Likely length of interruption to production (if any).
9. Action being taken (including using the Panic Number system).
10. Telephone number of correspondent or person dealing.

To ensure record is complete each item should be prefaced by stating its reference number as above, e.g. state '1 – 23rd September 2004, 2 – 19.45, 3 – Frank Jones, 4 – paint works, Birmingham ' etc.

If an item is not applicable its number should be stated followed by the words 'Not applicable'.

Insurance claims

Some incidents may become the subject of insurance claims. No admission of liability should be given to avoid breaching the requirements of the insurance policy. The insurers should be informed as soon as possible (there may be a requirement to do this under the policy with a refusal of claim if the notification is delayed) and their guidance sought as to further actions.

Control of major accidents

The Control of Major Accident Hazard Regulations 1999, are aimed at preventing major accidents and to limit the consequences of accidents to people and the environment. The regulations include a Schedule which lists various substances and two threshold quantities. They require any establishment which keeps such substances in excess of the thresholds to comply with the requirements of the regulations. If the establishment has substance(s) in excess of the lower threshold they must notify the appropriate 'competent authority' (CA) (i.e. in England the HSE and the Environment Agency) of:

- their name and address;
- the address where the substance(s) is/are if different;
- the characteristics of the substance(s);
- details of the activities in the establishment; and
- details of the environment which could cause or aggravate an accident.

In addition, operators must prepare a Major Accident Prevention Policy and must consult their employees or representatives about the preparation of on-site emergency plans.

If the establishment has substance(s) in excess of the higher threshold they must additionally:

- prepare safety reports and emergency plans which must show that all necessary measures have been taken to limit the consequences of an accident to people and the environment; and
- in conjunction with the local authority prepare an off-site emergency plan.

Addictions

Basis for inclusion

Commercial requirement with potential safety challenge.

Background

Workforces are usually representative of a cross-section of the population and may include persons using addictive substances. Growing awareness of the potential damage of such substances particularly non-medicinal drugs, and the effect some of these can have on the colleagues of users, has forced many employers to develop programmes that would, if completely effective, lead to the workplace being addictive substance-free.

Alcohol

Being under the influence of alcohol is not only dangerous to the subject employee, but also to fellow employees and to the employer's assets. Explaining the need to require employees to desist from imbibing during working hours (or even for a specific period before working, for example, if piloting a plane or driving on employer's business) for safety considerations, may enable progress to a 'no alcohol' rule to be made relatively easily. However, if such a rule is imposed, it should apply to all. There is nothing more likely to cause aggravation than the knowledge that alcohol (banned from the workplace) is available daily in the senior management dining room. The fact that this may be for entertaining clients tends to cut little ice. A no-alcohol rule should apply comprehensively – at least during working hours.

If consumption takes place on the premises after working hours, common sense needs to apply. This is even more necessary if there is, for example, a social club with a licensed bar on the premises. There needs to be a visible 'clear break' between the working environment and location and the opportunity to relax. A rule that having clocked off (or left the work environment), no-one should be able to re-enter the working area, may also be helpful. Failing to clarify the situation is potentially dangerous.

Case study

In *Weetabix Ltd v Criggie and Williamson*, the EAT found the dismissal of two employees for drinking unfair and too severe a penalty. The employees had arranged to go fishing straight after the conclusion of the day's work, and had taken all their equipment including beer and food for the trip to work intending to go fishing straight from work. The trip was called off and after the end of their shift, they sat in the rest room drinking the beer.

Over-imbibing and alcoholism may be a wider problem than it is generally thought. A report from the Royal College of Physicians and the British Pediatric Association indicated that amongst young people and children, alcohol-related deaths were 10 times greater than drug-related deaths.

Smoking

Since a 1993 ruling by the European Court of Justice found that the health of an employee was perceived to have been damaged by latent smoking – exposure as a non-smoker to smoke from colleagues' cigarettes – an increasing number of employers have sought to introduce smoking bans in the workplace. There is no right to smoke in the workplace although if it has been allowed previously a smoking ban must be introduced with care.

Case study

In *Dryden v Greater Glasgow Health Board*, an employment tribunal held that the employee's contract gave her no implied right to smoke at work. The fact that the employer had consulted widely, given reasonable notice of a smoking ban and offered counselling and support to those affected, stood it in good stead. Sound and comprehensive communication in advance of the ban also provided an effective defence.

The Health and Safety Executive has issued a booklet 'Passive smoking at work' which, among other matters, recommends that employers should give priority to non-smokers who do not wish to breathe tobacco smoke.

Case study

In *Waltons & Morse v Dorrington*, the EAT found that a secretary who resigned because of the environment within which she was required to work was unfairly constructively dismissed. She was forced to work in a corridor giving access to three offices whose occupants, as well as the other three secretaries who worked in the corridor, all smoked and whose office doors were usually open. The tribunal stated that employers were not entitled to treat the interests of smokers and non-smokers equally since the right to smoke has an effect on a non-smoker, but the right not to smoke does not have an effect on a smoker.

Introducing a ban

Whilst, to a non-smoker, the imposition of a smoking ban may be seen as a relatively minor step, to a smoker addicted to nicotine, being forced to do without regular intakes of that drug can be fraught. Introducing a smoking ban thus needs to be carried out with consideration for all involved. organisations that are engaged on food production, or handling food, or food-substitute raw materials, perfumes and flavours, or that use highly flammable products, should rarely experience problems enforcing a smoking ban, as the logic of the danger of smoke or of fire and/or smoke damaging the product is inescapable. With other organisations the logic of it being better for the health of all, courteous for non-smokers, safer for the protection of goods and workforce and cleaner in terms of the work-place itself, should be stressed.

Suggested procedure

1. Communicate proposal, outlining reasons, to all employees setting a timetable for implementation (possibly over several months).
2. Devise suitable wording for a rule to be incorporated in employer's rulebook (or equivalent) and agree it with employees and/or their representatives.
3. Undertake that during the implementation period, people will be cautioned for smoking but not via the disciplinary procedure. Hence during this period any cautions issued will be of the encouragement and counselling type.
4. Possibly designate a specified area for smoking at least on a temporary basis.
5. Provide counselling support and other assistance to those who wish to use the ban as impetus to give up smoking.
6. Once the introductory phase is complete, monitor the application of the ban forcefully so that there is no doubt that the aim is to enforce the rule rigorously.
7. Where there are breaches of the ban post implementation phase, indicate clearly that these will need to be dealt with under the disciplinary procedure.

8. Where counselling support is available, or where it may be necessary to find a place where confidential counselling can take place, the exclusion of such a room from an otherwise comprehensive ban may be advisable. (A similar exception might usefully be made for rooms where disciplinary hearings take place.)
9. It may be helpful, on a short term basis to set aside a room or place to which smokers can retire occasionally. However, the exact terms of any time 'allowance' must be made clear – if only to avoid a potential backlash from non-smokers not allowed to absent themselves from work for similar periods.
10. Where all smoking is banned, check that smokers do not congregate at the main or other entrances to the premises, which, apart from the congestion and litter that may be caused, can create a poor impression on customers, clients etc.

Smoking rooms

Whilst the provision of a 'smoking' room may seem to be an obvious solution to the problem of heavily addicted employees, it can have repercussions unless the rules under which such a room or place can be used are clearly laid down. Not only does the number and length of such 'smoking breaks' need to be delineated and related to the number and length of breaks available to non-smokers to avoid any backlash against the concession, but also there may need to be set aside a similar 'room' for non-smokers.

If an employer allows 'smoking breaks' this can be regarding as unfair to those who do not smoke and are required to work whilst others break. At least one employer has negotiated a pay differential between smokers and non-smokers where such breaks were introduced; others insist that those taking the breaks make up the time in other ways.

Despite every effort being made to assist and a long implementation period being provided, some employees will find it impossible to comply with a smoking ban and may then be forced to reconsider their employment. The introduction of such a rule, whilst it is in many cases a unilateral change

to working conditions, may not however allow an employee to claim constructive dismissal if forced to resign because of such a change.

Note: Following the introduction of a smoking ban in public places in the Republic of Ireland, pressure is building in the UK for a similar ban. A report in the British Medical Journal in June 2004 stated that the danger to non-smokers from passive smoking was twice as much as had been previously feared. This infers an even greater danger of employers who allow smoking in the workplace being sued by employees exposed to passive smoking.

Solvent and drug abuse

Whilst tobacco may still be acceptable in some environments, solvent abuse and use of non-medicinal drugs cannot be countenanced. Fortunately the persons affected tend to be a minority, not that this makes individual problems any less difficult to solve, and in most instances it may be necessary to refer sufferers to experts for assistance – rather than attempting a solution. Research commissioned by the International Labour Office and conducted by the Canadian Centre for Substances indicated that 3% of the average workforce are either alcohol or drug (or both) dependent. The groups at greatest risk are those with low status, younger people and males.

Example of procedure

1. Promulgate a policy stressing the wish of the employer to assist whilst respecting the rights and confidentiality of the individual.
2. Identify the symptoms – for example, erratic work, erratic attendance, excited responses to mundane matters, low output and/or quality of work, difficulty interfacing with colleagues, poor attention to appearance, poor health and/or appearance, physical disabilities (e.g. running nose, dilated pupils, marked skin) etc.
3. Attempt to identify the problem. Many of the symptoms described above may indicate addiction, but equally they could indicate a number of other problems. Nothing would be guaranteed to add

to the STRESS (or distress) of an employee suffering because (say) of the breakdown of a marriage, than to learn that their employer feels they are drug addicted.

4. Avoid making assumptions – invite confidence. Rather than setting up an interview and making a statement, invite the person to confide and discuss the problem.
5. If the employee refuses to discuss the position, request a medical examination, either by the employer's own retained medical advisor or by the employee's doctor.
6. If the employee is prepared to identify the problem take notes without comment and without criticism. Offer access to trained third party advice or, if apparently welcomed, to personal advice if it is felt that this is of value.
7. Invite repeated discussions to provide support (see COUNSELLING).
8. Advise the line manager and possibly colleagues (although this will depend on the problem and the circumstances), stressing the need to provide help and support rather than interference and publicity.
9. Hold a watching brief and request further referral to experts as and when necessary.

Note: The Chartered Institute of Personnel and Development (0208 971 9000) has issued a booklet entitled 'Substance Misuse at Work'.

Case study

In *O'Flynn v Airlinks Airport Coach Co Ltd* where an employee was tested positive for drugs and dismissed (the employer having sometime previously introduced a 'zero tolerance' attitude to non-medicinal drugs), the dismissal was not only found to be fair but also any possibility of it being in these circumstances a breach of the Human Rights Act was dismissed. In fact the HRA did not apply to this employer – at present the Act only applies to employers that are 'emanations of the State'.

Note: In August 2004 British Airways became the first airline in Europe to introduce random drug testing for all its employees if there is suspicion that they could be on duty and under the influence of alcohol or drugs, or if alcohol or drugs could have been the cause of an accident. Presumably to some extent this move was the result of a previous incident where flight and cabin crew resigned after failing breath tests just before they were due to take off.

At virtually the same time there was a call for surgeons to be routinely breathalysed and tested for drugs before they are allowed to perform operations. The President of the General Medical Council called for such testing as a report published in July 2004 showed an alarming rise in the number of doctors disciplined for drink and drugs problems.

Adoption

Basis for inclusion

Legal obligation

Background

Employees who adopt are entitled to adoption leave and adoption pay. However, the legislation does not grant these rights to employees who adopt having previously been the child's foster parents or to step-parents who adopt their partners child(ren).

Commentary

An adoption takes effect (and the rights are generated by) a registered Adoption Agency confirming an adoption date on a 'Matching Certificate' (MC) and the name of the 'main parent'. The week that adoption takes place is called the 'Matching Week' (MW) and adoptive parents are termed either 'main' parent or 'other' parent. Adoption rights are available to single sex couples.

Entitlement

Ordinary adoption leave (OAL) is the first 26 weeks leave. Additional adoption leave (AAL) is a second period of 26 weeks leave.

Married couples, male and female couples, and single sex partners can adopt and become eligible for benefit but to qualify they need to have worked for their employer for 26 weeks by the end of the Matching Week.

The main parent must give their employer 28 days notice of the date on which (s)he wishes his/her adoption leave to commence – and this must be within seven days of the issue of the MC.

The other parent must give their employer 15 weeks notice of their wish to take their leave entitlement which is Statutory Paternity Leave (SPL) and must (if they are to receive the benefits) sign a Declaration (SC4 available from the Inland Revenue) which includes:

i) the expected date of adoption;

ii) the date (s)he wishes the adoption leave and pay to start;

iii) that (s)he is in an enduring family relationship with the mother/main parent; and/or

iv) that (s)he will be responsible for the child's upbringing; and

v) that (s)he will be taking the leave to support the mother/main parent and care for the child.

The form requires the claimant's national insurance number. Only those who have earnings over an 8 week average that at least match the lower earnings level are entitled to pay during the leave. To be able to claim, neither parent must be in prison.

The rights

Leave

i) The 'main' parent is entitled to both the two leaves – OAL and AAL – making a total absence of 52 weeks. If (s)he wishes to return before the end of either leave, 28 days notice must be given.

ii) The 'other' parent is entitled to 1 or 2 weeks leave (as for 'paternity' leave) which must be taken within 56 days of the adoption.

Adoption pay (AP)

i) Payment for the first set of 26 weeks leave for the main parent is at the rate of 90% of the persons average earnings or £102.80 (April 2004) whichever is the lower.

ii) There is no payment for the second period of 26 weeks.

iii) Payment for the other parent's leave is at the rate of 90% of average earnings or £102.80 (April 2004) whichever is less.

Once the main parent has notified their Matching Week, the employer must confirm the date of leave and the date of return.

Recovery

92% of adoptive leave payments are recoverable by 'large' employers by deduction from their NI contributions. A 'large' employer is regarded as any employer whose total National Insurance liability for the previous tax year was £45,000 (April 2004) or more. Other, 'small', employers can reclaim the whole amount plus a 4.5% 'admin' charge. If a small employer would find it difficult to fund the AP they can apply for an advance.

Multiple adoptions

Adoptive leave is available only on a single basis – if two or more children are adopted, only one set of leaves/pay is available for each parent.

Note: There are proposals to increase the amount/period of payment of the higher level of maternity pay and the extent of paternity pay. If so, the above rights (which mirror them) would also need to be increased.

Blank

Appeal

Basis for inclusion

Legal requirement (and natural justice)

Background

Most will agree that those found guilty of an offence should have a right of appeal and this principle applies within the employment relationship. Every employer must have DISCIPLINE and GRIEVANCE procedures incorporating the right of appeal. Ideally, appeals should be heard by someone other than those involved in its determination reviewing the case and reconsidering the decision (and/or the sanction) made.

Commentary

The DTI report ('Industrial Tribunals, Workplace Disciplinary Procedures and Employment Practice') indicated that employers who do not have and use effective disciplinary and grievance procedures, are more likely to lose tribunal cases. The most common failings were management not giving employees a chance to state their case *or to appeal to someone not involved in the case*.

The Appeal process under the disciplinary procedure could use the Grievance procedure as the appeal clause. This has the advantage that since it is a procedure used for non-disciplinary matters, it may be familiar to employees. However, some employers prefer there to be a specific clause or procedure. Any appeal clause should be short, simple and ideally unconditional. Making the appeal clause unconditional may result in the employer hearing a number of worthless appeals – but better to hear worthless appeals than create a procedurally unfair dismissal. Indeed, an appeal may be as valuable a device for the employer as it is for the employee.

Case study

In *Clark v CAA,* Mrs Clark was dismissed for running a travel agency from her desk in the Head Office of the Civil Aviation Authority – against their rules. In dismissing her the CAA breached their own procedure. Mrs Clark appealed and her case was completely re-investigated and examined by a director who confirmed her dismissal. The EAT rejected her claim for unfair dismissal since it held that the appeal process which amounted to a complete re-hearing of the original hearing had corrected the flaws in the original process.

Using complicated wording for appeal clauses may cause managers to breach the procedure – a rejection of a request for an appeal may create a procedurally unfair dismissal.

Case study

An employee working for an adoption agency breached both her contract and the Children Act by leaking details of two children awaiting adopting and prospective parents to another agency. Her employer determined it was gross misconduct and dismissed her. She appealed. Their appeal clause was four pages long and difficult to understand (at the Tribunal hearing even the person who wrote it could not explain it) and the director, to whom she appealed, thought he had the right to reject her application for appeal. This was not the case and thus she won her case for procedurally unfair dismissal. (She received no compensation however, since the Tribunal held she had contributed 100% to her own dismissal and reduced compensation by that amount.)

Thus an appeal clause may be best drafted in terms similar to:

'If you do not agree with the decision or the severity of a sanction, you have the right to appeal to [name/position]. An appeal can be made on the attached form and should be lodged within [5 working days] of the original decision. If you have any difficulty framing your appeal, or completing the form you can refer to [name/position] for assistance.'

Appeal procedure

For the guidance of managers dealing with appeals as much as for employees it may be best to provide an appeal procedure.

Example of appeal procedure

[The employer] is committed to the concept of fairness in all aspects of employment. This procedure can be used to ensure that disciplinary hearings and decisions are fair and just.

1. Following a disciplinary hearing at which an employee has been made subject to a sanction or penalty, the employee has a right to appeal against the decision to the next higher rank of person to the person conducting the disciplinary hearing.
2. A reminder of this right of appeal, details of the appeal clause and a form by which the appeal can be lodged, will be given to the employee at the same time as the confirmation of the decision regarding the sanction to be imposed.
3. The appeal must be lodged with (nominated employee – NE) within 5 working days (i.e. Monday to Friday excluding any Bank Holidays) of the receipt of the decision regarding the sanction. [Name/position] is available to assist in the completion and submission of the appeal.

Notes

- The NE should be someone known to and/or immediately available to employees. Requesting employees to lodge an appeal with the manager to whom their manager reports may inhibit such action – as some will be unaware who this is, and/or be unwilling to approach that person.
- The person providing assistance re-drafting the appeal, should be instructed that their duty is to assist employees in submitting an appeal and should on no account attempt to dissuade them from proceeding.
- If the employee is requested to provide a dated receipt of the sanction decision the date for the receipt of the appeal is easily calculated.

4. The appeal might state the grounds on which it is being lodged although it is accepted that some employees may prefer not to do so.
5. This procedure places no limitation on the grounds for appeal, since any limitation of appeal may appear to some simply to be a denial of justice.
6. The appeal will normally be held within 10 working days of the appeal being lodged in working hours. The employee will be given at least 3 working days notice of the date and time.
7. The employee may be accompanied at the appeal by a [person/another employee] of their choice. (Note: Under the current Employment Relations Bill the rights of those accompanying employees at disciplinary and grievance hearings are to be extended.)
8. An independent person appointed by the employer will take notes. A transcript of the proceedings will be provided to the employee within 2 working days of the appeal. A receipt will be obtained

when the transcript is given to the employee. The employee will be advised that they have [3] working days within which they can object to the transcript. Their objections must be lodged with the Chairman whose decision whether to amend/correct the record or not will be final. In the event of an amendment/correction being required, a fresh version of the notes will be issued under the same delivery rules as above.

9. The person conducting the appeal and responsible for making a decision shall not have been involved previously in the events leading to the appeal.

10. The employee can ask all and any such questions that they think are relevant – even re-hearing the whole case if it is deemed appropriate. The employee may present such evidence and/or reasons for mitigation as appears to them to be relevant.

11. Witnesses and evidence may be presented by both sides and every opportunity allowed to both sides (and the person conducting the appeal) to ask such questions as they wish.

12. The person presenting the employer's case at the appeal shall not take part in the decision-making aspect of the appeal.

13. A decision regarding the appeal will be communicated to the employee as soon as possible and in any event within 3 working days.

14. If the appeal decision confirms the original decision then the employee will be advised of a further right of appeal to a director in which case the above guidance will apply to that further appeal.

15. If the further appeal decision confirms the original decision then the employee will be advised of a further and final right of appeal to [the chairman] in which case the above guidance will apply to that final appeal. The [chairman's] decision will be final.

16. If the decision at any stage is to change or cancel the original sanction immediate steps will be taken to affect this and to restore both parties to the position operative prior to such action being applied.

Note: If the original decision was dismissal, an alternative sanction (or the complete quashing of the dismissal decision) can only be effected with the agreement of both parties. Such an agreement should be in writing.

17. If the decision is confirmed and not appealed then within 6 working days the original sanction will be implemented.

Note: The delay is to allow time for an appeal to be lodged. A decision will need to be taken whether to apply the sanction if an appeal is lodged. It may seem to support the idea of the independence of the appeal if the sanction is held in abeyance until the appeal is decided, although this does provide an opportunity, if there are several stages of appeal, for the employee to keep deferring the implementation.

18. On confirmation of a decision on final appeal the original sanction will be implemented when the decision is announced.
19. The date of effectiveness of the above procedure is [date]. Changes to the above will not be effective until 21 days after notification on [all notice boards] has appeared.
20. In dealing with all appeals the [Organisation] wishes to ensure that its employees have confidence that their cases will receive full and fair hearings.

Deliberate delays

Such an appeal procedure allows scope for an unscrupulous employee to 'play the system', deferring the application of a sanction for around 10 weeks and absorbing management time in the process – but this seems unavoidable and at least it demonstrates the fairness of the employer's system.

Appraisal

Basis for inclusion

Commercially advisable

Background

The purpose of an Appraisal or Performance Review scheme, is to provide a regular opportunity for employer and employee to discuss the progress and performance of the employee, to consider whether any shortcomings in past performance and/or any skills needs required by forthcoming changes can be provided by training or coaching, and to determine the priorities, training and career path for the future.

Commentary

The employer has the right to state whether an employee's performance is to the level they require. Inevitably this can give rise to a difference of opinion – although there is evidence that many employees actually underestimate their performance. Disagreement can very often give rise to dispute and the introduction of any process of review of employees performance, particularly if the results are to be linked to financial reward, needs to be handled with great care and with the benefit of a full communication process.

Those primarily responsible for the operation of the scheme must be briefed on its aims, administration and problems, and also trained in conducting the process and interviews. Initially, a discussion document should be distributed which will identify the main aims of the scheme.

Appraisal scheme aims

a) To enable employee and manager to assess actual performance against preset objectives and planned performance.

b) To establish strengths and weaknesses, and, from them, training needs.

c) To provide the means by which aims and targets for the following period are set and measured.

d) To establish career paths.

e) To provide support and guidance from the assessor.

Challenges

i) The need for full communication and consultation with employees to enable the positive aspects of the scheme to be attained.

ii) Setting out the administration of the scheme including the appeals procedure.

iii) Determining how training needs identified will be addressed.

From discussions about the proposals, a scheme can be drafted, and advice on the details codified into a guidance 'crib'. The scheme then needs to be communicated to and discussed with employees. This should fall into two parts:

a) an initial written document setting out objectives and administration, etc., giving employees time to consider their concerns and questions; and

b) meetings at which employees can discuss their concerns. The process should be as open as possible, since without the commitment of the employees to the process, it cannot work. Reassurances or guarantees regarding the maintenance of wage increases, and opportunities for those with a poor review to use the CAPABILITY appeal procedure, etc., should be given. There may be an advantage in not linking results to payment – at least initially.

As a result of this process, the scheme format may have been somewhat changed and it may be necessary to re-brief the management. It may also be advisable to implement a pilot scheme covering volunteers. This will have the effect of highlighting difficulties, and will allow both employees and managers a chance to try the system before full implementation. The results of the pilot scheme should be publicised and explained. The benefits of the scheme are long-term and considerable, and time spent in planning and perfecting the scheme should be a sound investment.

Paperwork

Paperwork backing the process includes:

- A JOB DESCRIPTION which ideally should have standards or measures of performance for each task. The review of progress can then be linked to, and based upon, the level of attainment and, as a result, should be more objective and factual than would otherwise be the case.
- An appraisal form itself.
- A procedure.

Procedure

1. Each employee will be given a Performance Review with a copy of their latest Job Description.
2. They will be requested to complete part I (self-assessment) and to give the form to their manager at least a week before the date set for the interview.
3. The manager will prepare a checklist of personal views on the self-assessment. Reference should be made to employees' TRAINING records for guidance on past development and possible future training.

4. Employee and manager discuss part II and reach agreement to the attainment rating. This may mean altering the rating in either direction. In the event of a failure to agree the appeal procedure will be used.
5. Employee and manager jointly complete part III: priorities for following work period, and identification of any training needs.
6. All the performance appraisals for each manager's employees are discussed with a director and [personnel administration] to try to ensure a uniform approach throughout the Organisation.
7. The job description should be updated (if necessary), and training needs identified during the process.
8. Performance review takes place every six months, although, if there is a particular need, it may be appropriate to review some employees at shorter intervals.

The performance review form

Whilst the form should be kept short, it must be comprehensive.

Managerial/supervisory staff performance review/plan

Note: Some questions may require a commentary style answer. If space is insufficient please use a continuation sheet.

PART I Background

Name _____

Position _____

Department _____

Date appointed to position _____

PR Form issue date Interview held _____

Is the Job Description for this position up to date and correct?

_____

If not, please specify the area(s) in which it is deficient.

_____

If there are changes, are you able to cope with the altered responsibilities – or do you require training in order to cope?

_____

If so, please specify what type of training.

_____

Have you since the date of your last Review undertaken any training? If so, please give details, assess the worth of the training, and state how it is helping you in your job.

_____

Is it likely that there will be changes to your responsibilities before the next Review? If so, do you feel you will be able to cope with these changes, or will you require training? If so, please indicate the areas where training may be necessary.

_____

Are there any personal factors which could have an effect on your performance in the near future? If so, please provide details.

_____

Is there any other information which you feel has a bearing on this review process and/or the performance of the job? If so, please provide details.

_____

In the chart set out below, list the measures of performance for each of the duties set out in your Job Description and then on a grading scale of A – E

_____

(A: meaning you have always achieved the standard set in the measure, B: means these standards have usually been achieved, C: sometimes achieved, D: seldom achieved, E: never achieved).

Position	Objectives	Measures of Performance	Rating A B C D E
1. 2. 3. 4. 5.	(Data derived from job description)		

If you have graded yourself D or E for any of the duties, please state for each if there are any particular reasons why you feel you have performed at this level.

_____

_____

_____

_____

GENERAL

Did you achieve anything else within the period which is not covered by your job description? If so, please give details.

_____

Was there anything you needed which would have improved your performance? If so, please give details.

_____

Have you been able to help any colleague with his/her work? If so, please give details.

_____

Are you able to deal with all requirements for information concerned with your job from:

- superior YES/NO
- colleagues YES/NO
- other internal YES/NO
- external sources YES/NO

If the answer to any of these is NO, please state why you feel this was the case.

_____

Do you feel you are able to get on with those with whom you come into contact?

_____

What do you feel is (are) your main strength(s)?

_____

What do you feel is (are) your main weaknesses?

_____

On the scale on the previous page (i.e. A to E), how do you rate yourself for the following?

Accuracy: _____ Diligence: _____

Setting priorities: _____ Relationships: _____

Motivation: _____ Adaptability: _____

Commitment: _____ Overall performance: _____

PART II Assessment

A Performance Review interview with _____ was held on _____ at _____

The assessment provided by the job holder was reviewed and the ratings confirmed/altered as shown.

The overall performance rating was agreed as _____ (A to E).

PART III Priorities and training

Please set out an analysis of any action(s) agreed to be implemented, giving measures of performance and timescales if appropriate.

1. _____

2. _____

Please indicate priorities for the forthcoming period.

1. _____

2. _____

Please indicate any career path envisaged.

_____

_____

_____

Part III Priorities and training (continued)

TRAINING NEEDS

Please set out the type of training required and, if relevant, the timing of such training.

_____

_____

_____

_____

_____

_____

Signed _____

Job Holder_____

Manager _____

Date _____

Reviewed by _____

Director_____

Date _____

Non supervisory staff performance review and plan

Part I Background

Name _____

Position _____

Department _____

Date appointed to position _____

Issue date _____

Interview held _____

This form needs to be completed by you and handed back to your supervisor/manager at least 7 days before the date set for your Interview (see above). Be fair to yourself and try to give honest answers to each question. Do not be afraid to write 'No', if that is the correct answer – we develop at different rates and at different times in our life. The aim of the review is to help you perform your job to the best of your ability, and, if you have the ability and so wish, to train you for your next job.

Is the Job Description for this position up to date and correct?

_____

If not, please specify the area(s) in which it is out of date or incorrect.

_____

On a grading scale of A – E (A: meaning you have always achieved the standard set in the measure, B: you have usually achieved that standard, C: sometimes achieved, D: seldom achieved, E: never achieved), mark how well you feel you performed each task on your Job Description.

RATING

Position	Objectives	Measures of Performance	Rating A B C D E
1. 2. 3. 4. 5.	(Data derived from job description)		

What is your overall impression of your performance of your tasks over the period since the last Performance Review? (On a scale of A to E)

_____

_____

_____

_____

How satisfied are you with your performance? WELL/ FAIRLY/ NOT.

If you are only Fairly satisfied or Not satisfied do you have any views on why this is the case?

_____

_____

Have you achieved anything else since the last Performance Review?

_____

_____

Was there anything you needed which would have improved your performance? If so, please give details.

_____

_____

What do you feel is (are) your main strength(s)?

_____

_____

What do you feel is (are) your main weaknesses?

_____

_____

Are you interested in training and progress?

_____

_____

Part II Assessment

A Performance Review interview with was held on at . The assessment provided by the job holder was reviewed and the ratings confirmed/altered as shown.

The overall performance rating was agreed as (A to E).

Please set out an analysis of any action(s) agreed to be implemented, giving measures of performance and timescales if appropriate.

1. _____
2. _____
3. _____
4. _____
5. _____

Part III Priorities and training

PRIORITIES FOR COMING PERIOD

1.

2.

TRAINING NEEDS

Please set out the type of training required and, if relevant, the timing of such training.

_____

_____

_____

Signed _____

Job Holder _____

Manager _____

Date _____

Reviewed by _____

Director _____

Date _____

Follow-up

Appraisal depends on proper and open communication between employee and manager. Part of its purpose is to identify TRAINING needs but in addition, the objectives set for attainment during the period to the next review, need to be real objectives, having point and relevance to the job in hand. They also need to be capable of attainment within the period, or, if not, the fact must be recognised and a realistic timeframe set. The objectives need to be agreed and accepted by the employee – unless this is so, there will be no commitment to their attainment, and hence little chance of success.

Reviewer preparation

The reviewing manager will need to prepare for the Interview by considering the self-assessment form. The following checklist could act as an information prompt during the interview – comments can thus be backed by fact, derived from previous checks, rather than from unsubstantiated opinion.

Performance review and plan Reviewer's guidance

Subject name _____

Position _____

Before completing this checklist ensure the information shown on the subject's form is correct and the Job Description is the current issue.

1. If the information given by the subject is incorrect, state the discrepancies.
2. If you disagree with the grading of work by the subject, state reasons.
3. If you disagree with the overall assessment, state reasons.
4. If the items listed as achievements have been incorrectly stated, note corrections.
5. Are suggested training needs acceptable? If not, state reasons or alternatives.
6. Career path – is there a path for this employee. If so, suggest timing and training required, if not, suggest alternative solution.
7. Would a further review before the next Performance Review is due be helpful? If so, suggest date.

360 degree appraisal

Some organisations extend reviewing performance so that all those with whom the subject comes into contact are asked for their views. Thus a manager's own appraisal will not only include their own self-assessment and the assessment of the person to whom they report but also the views of their subordinates, their colleagues (other managers) and others with whom they interface. Those organisations using this process claim it to be valuable but inevitably the investment in time etc. is considerable. The process of appraisal or performance review suggested is highly structured, whereas ideally managers should be reviewing the performance of their team members continually. After all, the whole point of management (sadly often overlooked) is 'to help people succeed'. Managers can only achieve what they want (or what they are required to achieve) through the activities of their team – they need to be supportive and motivational (see KEEPING THE TEAM).

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Bullying

Basis for inclusion

Commercial requirement but with potential legal liability

Background

Whilst harassment is normally taken to refer to sexual advances, talk or innuendo, bullying can relate to a whole range of other activities which, unless checked could result in serious injury – and become the liability of the employer (being responsible for what occurs in the workplace). Bullying and harassment, whether it is on racial, sexual, sexual orientation, religion and/or disability grounds, is discrimination. Under the Criminal Justice Act 1994 harassment is a criminal offence punishable by a fine of up to £5,000 and/or imprisonment of up to 6 months, and under the Prevention of Harassment Act 1997 these penalties were considerably increased.

Commentary

The Criminal Justice Act defines bullying as, with intent, causing a person harassment, alarm or distress by using threatening, abusive or insulting words or behaviour, or disorderly behaviour or displaying any writing, sign or other visible representation which is threatening, abusive or insulting. The European Community has advised that employers should adopt a policy on this problem and should take a proactive role in ensuring that it is avoided – or at least minimised.

EU suggestions

1. Advise staff what constitutes sexual harassment or bullying, and make it clear that it is unacceptable.
2. Provide a complaint process.
3. Ensure managers know it is their responsibility to ensure harassment does not occur.
4. Ensure all employees know both policy and complaint process.
5. Ensure the complaints process is clear and user-friendly (and the confidentiality and anonymity of the complainant is protected).
6. Provide counselling facilities.
7. Investigate all complaints swiftly and fairly.
8. Apply sanctions against those responsible.

A 'Guide to combat sexual harassment' is available from ISCO, 5 The Paddock, Frizinghall, Bradford, BD9 4HD. The Chartered Institute of Personnel and Development (Tel: 0208 971 9100) has also produced a booklet on the subject.

Avoidance or control

Since everyone must be made aware of their responsibilities, employers may need to coach employees to understand what constitutes what can be regarded as offensive and illegal. One company suggests the following tests in deciding whether a particular conduct or wording is potentially sexually harassing:

a) Would you say or do this in front of your parents and/or spouse/partner?

b) Would you say or do this in front of a colleague of the same sex?

c) Would you like to see a report of this behaviour or words appear in the local newspaper?

d) Does what is being done or said, need to be said or done at all?

Supervisors and managers have an obligation to ensure everyone (including themselves) acts in accordance with the employer's DIGNITY at WORK policy. Thus they need to:

a) Act and react to all employees (and other persons with whom they interface) with respect and dignity.

b) Correct and apply sanctions against any unacceptable behaviour.

c) Know and apply the [organisation] DIGNITY AT WORK policy.

d) Ensure the [organisation] complaint process is known by all.

e) Deal immediately with such complaints, objectively and fairly.

f) Try to appreciate the reactions of the complainant.

g) Encourage concerns to be expressed rather than sublimated.

h) Endeavour to stamp out victimisation and/or retaliation.

Practical implications

Harassment and bullying at work is thought to resemble an iceberg – only a small proportion is currently visible and complained of, the vast bulk of such problems remaining hidden and unreported. Even if this is so, the actions taken as a result of harassment tend to have a high profile and to attract large sums of compensation.

Case studies

In an out of court settlement the Metropolitan Police paid their employee, Sarah Locker, £32,000 after she successfully complained of harassment, racial discrimination and being passed over for promotion.

Islington Council paid Adenike Johnson £15,000 plus a contribution to her costs, when she had to give up her painting and decorating job because she was subjected to sexual abuse, assault and bullying by fellow employees.

In those cases the compensation was paid by the employer as they were held liable for the acts of their employees. To escape liability employers must ensure that employees abide by the rules. If detailed rules exist, are well policed and administered, and sanctions are applied to those that transgress, and then harassment occurs, the responsibility and liability may be passed to individual employees.

Case studies

In *Enterprise Glass Co. Ltd. v Miles*, although the company, who failed to stop a supervisor sexually harassing an employee (Mrs Miles), was ordered to pay her £1,000, the supervisor himself had to pay her a further £750. The Sexual Offences Act 2004 came into effect in May 2004. Under this Act, the boundaries of relationships between the sexes in the workplace are better defined which should leave those responsible for administering and enforcing the law better equipped to deal with sexual harassment at the workplace. These instances (often described as 'harmless fun' by the perpetrators) are unacceptable and may now generate far more serious sanctions. For example, the old offence of 'indecent assault' has been replaced by 'sexual touching'. A person who touches a member of the opposite sex in an intimate gesture could not only be subject to disciplinary action (e.g. dismissed for gross misconduct) from their employer, but could also find that under this Act they are placed on the sex offenders register and have a criminal record.

In *Yeboah v London Borough of Hackney*, although the employer had to make a considerable payment to their former employee who had suffered racial discrimination, the manager who actually conducted the discrimination was ordered to pay £45,000 plus £14,000 interest (the figure being altered on appeal to £32,000 plus £23,000).

The amounts awarded can reflect the seniority of the perpetrator, the degree of intent and whether it was a one-off instance or a series of deliberate acts. The culpability of the employer will depend on the level of action they

took to deal with the complaint and to apply sanctions to the perpetrator. Where there was no remedial action both employer and employee responsible could be liable to pay damages. However, where the employer has taken all reasonable steps to try and stop bullying or harassment then they may escape liability.

Case study

In *Haringey Council v Al-Azzawi*, Al-Azzawi claimed racial discrimination against his employer because a colleague referred to 'bloody Arabs'. The employer disciplined the person responsible and made him apologise. Although a tribunal accepted the applicant's claim and found in his favour, the Employment Appeal Tribunal overturned this on appeal because the employer had a racial awareness policy, trained employees on it and disciplined offenders. Thus, the employer was held to have taken all reasonably practical steps to prevent discrimination occurring.

Harassment and bullying offends good employment practice, detracts from efficiency and productivity, and will almost certainly place the victim under STRESS, which can itself be grounds for a liability claim against the employer. The traditional concept of a bully is a strong person whilst the person being bullied is not as strong (either physically or mentally – or both). This, however, is not always the case and is further complicated by the fact that some who are bullied are bullies themselves. Not all bullying is continuous – pressure or stress on a person may make them respond by bullying others – almost as an instinctive reaction. Whilst this kind of spontaneous reaction may be understandable it needs to be guarded against, although long-term and systematic bullying poses a much more difficult problem, particularly when others join the bully and are oppressive to the target. Retail organisations may need to support employees who are bullied by customers or others seeking to exploit the 'harnessed' reaction of those seeking to serve or assist them. Whilst a customer may have a legitimate complaint against the Organisation, those in the direct

firing line are hardly likely either to be those who have caused the problem or more importantly those who can actually resolve the complaint. Hence, such staff should be briefed in how to handle irate and angry customers – an immediate apology and apparent intent to assist may defuse many situations but will be insufficient for some. Failure to accept their responsibility in this area will effectively make managements and organisations accessories to those who seek to bully. In two recent cases, both settled out of court, employees won substantial sums from their employers as a result of stress caused by bullying.

Case studies

Mrs Noonan won £84,000 from Liverpool City Council for stress brought about by bullying instigated by a colleague – later her junior, Mrs Lancaster, was awarded £67,000 against her employer – Birmingham City Council – for stress brought about by her having to deal with aggressive council house tenants following her transfer without training into that department.

Evidence

It can be difficult to obtain evidence of bullying since those suffering may be wary of giving evidence, fearing (unless the instigator is dismissed) that it may make the position worse. If witnesses have such a fear, it is possible to use written statements at a hearing without identifying their source provided the employer has checked as far as possible that the statements are true.

Case study

In *Ramsay v Walkers Snack Foods* (a case concerning theft but the principle is the same) three employees were dismissed for theft of money from bags of crisps used for national promotion. The evidence was derived from a number of statements from other employees who wished to remain anonymous. The EAT held that the employer had acted fairly to balance the 'desirability to protect informants who are genuinely in fear' and providing a fair hearing for the accused employees.

Witnesses giving evidence (either in person or by writing) have no right to be told the decision of the hearing. If they ask they should be told 'the complaint was founded (if it was) but the employer cannot discuss the outcome of a disciplinary hearing'.

The Work Foundation (formerly the Industrial Society) (0207 479 2000) and the Trades Union Congress (0207 636 4030) have recently jointly produced a video 'No excuse: Beat bullying at work'.

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C

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Capability

Basis for inclusion

Commercial advisability with legal overtones

Background

'Our employees are our greatest asset' is one of the most repeated and probably hypocritical comments in 'corporate promotion-speak'. Employees are many organisations greatest cost and employers need to maximise the return from such investment. Thus, items covered in FAMILIARISATION, TRAINING, COMMUNICATION and KEEPING THE TEAM sections are essential concomitants towards achieving this end and maximising the capability of employees. Employers may also have to deal with those lacking capability.

Commentary

In FAMILIARISATION, it is suggested that a process as long as a year should be utilised to ensure newcomers find their feet and are properly assimilated into the Organisation. Similar support may be needed with longer service employees, particularly when they are affected by change. The process is ongoing and essential – and the investment may be swiftly repaid.

Case study

The Fox's Biscuits factory was once the poorest performing factory in the Northern Foods group. The management realised some years ago that although millions of pounds had been invested in new technology, nothing had been done to improve the skills of the employees. £300,000 was invested in people. Multi-skilling was introduced, although individuals could specialise in their own 'principal' job. An NVQ specifically tailored to the requirements of the factory was developed with a local college and of the 345 employees, 181 achieved level 1, 128 completed level 2 and 35 finished level 3. Absenteeism dropped as did labour turnover. Employees were encouraged to submit suggestions and ideas for improving processes and procedures. As a result, in one year savings of over £350,000 were achieved – one employee submitted 40 ideas most of which were implemented. The General Manager commented that 'improving capability through developing and involving our people has been the catalyst for our success'.

Complacency is a danger here and the answers to certain key questions may need to be checked. Whilst this could be conducted by their own managers, it may be preferable to use external consultants and to offer confidentiality and anonymity to respondents. In this way responses are more likely to be truthful and open.

Example of 'employees attitude' audit:

1. Are our plans discussed with employees so that the employees themselves 'own' the plans to gain their active commitment to them?
2. Do we encourage employees to make SUGGESTIONS and constructive criticism about the company, its products, procedures and endeavours?
3. Is there mutual respect between management and employees and are the pressures on employees in terms of working and private lives balanced?

4. Do we listen actively to our employees' ideas and concerns so that the full facts and implications of all matters are exposed?
5. Are initiatives introduced via consultation and agreement, thereby generating a 'yes' reaction and a genuine commitment?
6. Does everyone involved realise that as part of a single team their objective is to satisfy their customers in order to achieve the aims of the Organisation?
7. Is training provided and are employees encouraged to develop their skills and talents at all times, with active support from management?
8. Do managers and employees work in job-related teams mutually helping solve problems, meeting output targets that they have agreed?
9. Does information flow both ways, thus generating genuine two way communication – and is this belief confirmed by the employees?
10. Do managers 'walk the job', are they approachable and do they listen to ideas, suggestions, complaints etc.?
11. Are employees proud to state that they work for the Organisation?

The downside

Almost inevitably some employees will be unable to perform to the standard required of them – for a variety of reasons. The difficulty may be one of personal problems or one of outright lack of skill. The problems must be identified, although motivating such employees may not work since it may appear that there is a barrier through which messages, invitations and exhortations cannot pass. Answers to the following non-exhaustive list of questions will try to build an information source which might help demonstrate areas where attention could be directed and/or problems removed, in case this can assist. Capability problems are often related to newcomers or those new to a job and thus background information is essential.

1. The employee

a) Is person new to job?

b) Is person new to type of work?

c) Is person new to country/part of country?

d) Has person adequate reading/speaking skills:

i) in native language?

ii) in language used at workplace?

e) Is person under stress or suffering from personal problems?

f) Is person under medical supervision?

g) Are there any housing/travel difficulties?

h) Is there any evidence of disaffection regarding the department, employer, etc. (for example, the employee could be annoyed at being passed over for promotion, or at not gaining a pay rise, or at a lack of recognition for a valuable suggestion implemented, and so on)?

2. Training

a) Has person been present at training courses?

b) Has there been any apparent problem in acceptability on course?

c) Is training undertaken willingly or with resentment?

d) Have courses been assessed for validity and effectiveness?

3. Relationships

a) Is person a loner?

b) Do they have problems inter-relating to other employees?

c) Is there any evidence of harassment, discrimination, victimisation?

d) Has management/supervision changed recently?

e) Does employee seem to have workplace friends?

4. Position

a) Is position appropriate to person's skills, experience, and capability?

b) Is task boring or repetitive (if so, is it possible to rotate employees so that all share in this task and others which are more interesting)?

c) Are working conditions poor?

d) Are working hours unsocial or difficult?

e) Are rewards reasonable compared to other jobs in workplace, in neighbouring employers?

Analysis

In trying to assess the nature of the problem by requiring answers to the questions, an impression will be built both of the employee and of the way they are fitting (or failing to fit) into the business. Such facts should highlight the main areas of difficulty and suggest that concentrated attention should be paid to these. Unless such facts are available, effective remedial action will be virtually impossible to implement and taking action or sanction could result in an accusation of unfair dismissal.

Whether the problem seems to be one of capability or of application, the employer needs to attempt to agree with the employee that the present situation is unacceptable as a first step towards moving to a satisfactory resolution. Publishing (perhaps in a HANDBOOK) a Capability policy may defuse the potential emotive reaction of performance being challenged, since such action is simply 'in accordance with policy'.

Draft capability policy

1. The employer believes it is in their (and the employee's) best interests for employees to work to the best of their abilities and to maximise their talents.
2. To assist, the employer will provide suitable, job-related training as identified in consultation with the employee
3. No employee will be forced to undertake training or to perform at a level beyond that at which they are comfortable. However, if training is refused and the level required by the employer is not attained it must be realised that a substandard level of performance cannot be accepted.
4. Every encouragement will be given to those trying to improve their performance by following this procedure.
    a) the manager will ensure the employee is aware of the level of performance needed and, if not, set these standards out clearly and by comparison and assessment of current performance.
    b) if the required levels are already known, the manager will discuss any problems that prevent the employee reaching the required level with the aim of resolving these problems and allowing unfettered performance.
    c) if there is a perceived need for training or coaching ensure these will be provided and checked for effectiveness.
    d) in consultation with the employee the manager will agree a programme and time limit within which measured improvement is required.
    e) a review of progress will be made, and, if performance has not improved any problems checked and removed, if necessary setting new goals and time limits.
    f) where necessary, any further support and/or training will be provided.
    g) steps c) to f) will be repeated as necessary until the required performance level is attained or no progress is being made.

h) where, despite repeated efforts, the provision of training and counselling, performance does not improve, consideration should be given to transferring the employee to alternative work.

i) a reasonable time with support will be provided for a person transferred under this process and the capability checks above will need to be repeated.

j) if the transfer is not possible or has taken place and again there seems to be an inability to improve to the required level, and thus there seems no way forward, the employer may need (as a last resort) to invoke the disciplinary procedure.

Tying the question of capability to the disciplinary process at the first stage can be unfortunate and even counter-productive. If the employee is genuinely trying but unable to improve, facing a disciplinary hearing is unlikely to do anything other than make the situation worse. Conversely, there does need to be some means by which the employer can avoid paying for inferior performance and thus, where the steps outlined above have been completed without improvement – or improvement to the level required – it may be unavoidable to invoke the disciplinary procedure. The importance of proceeding through each step of the capability programme and giving the employee reasonable time to improve, cannot be over-estimated if ultimately a fair dismissal is to be achieved.

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Communication

Basis for inclusion

Commercial necessity

Background

In his book, 'Making it Happen', Sir John Harvey Jones states 'with the best Board in the world, and the best strategic direction in the world, nothing will be achieved unless everyone down the line knows what they are doing and gives of their best'. The Confederation of British Industry is on record as stating that 'effective communication with employees will be one of the major issues facing management over the next decade'. The questions of how, what and when to communicate and/or inform needs to be determined at a policy making level – and carried out at every level.

Commentary

Whilst formal expectations of communication may need to be set down in writing by means of a policy, business is all about personal interfacing. Nothing is achieved without some degree of communication – 'all business consists of is people going around interacting with one another'. A policy and procedure may set out a framework but there is no substitute for comprehensive and informal communication on an everyday basis – as John le Carre said 'a desk is a dangerous place from which to view the world'. Directors and managers who fail to 'walk the job', to be approachable, to communicate effectively with those who they wish to work (which above all means listening to them) are unlikely to achieve the aims of their organisations as effectively and efficiently as possible.

Case study

In early 2001, the once leading retailer Marks and Spencer announced another year's 'poor' results. An anonymous 'retail high flier' was quoted in the Daily Mail as saying '[the Chief Executive] has got to have a faster fashion cycle, changing goods in six weeks and dumping them if they don't sell. Directors should be seen out and about. I'll start believing in [the CE] when I see him picking up rubbish in the car parks'.

Rubbish collection might not be the best use of the Chief Executive's time but the point of getting out and about is entirely valid – literally 'the best manure is the farmer's boot'. Genuinely 'walking the job' has the great twin advantage of making the top managers approachable and destroying any managerial arrogance. There is no better and truer communication than top management listening to people at the sharp end.

Case study

Lord McLaurin, the person credited with contributing largely to the recent success of Tesco becoming the UK's No1 food retailer, stated recently that he learned a lesson from Jack Cohen, Tesco's founder, 'Good listening includes listening to the most humble employee as well as the board members'.

For a retailer this has an added advantage since those at the sharp end may well be listening to what the customers are saying.

Policy

A communication policy is a statement made and disseminated by an Organisation through which it commits itself to the regular production and distribution of information and/or allows transference of information on a two way basis. Unless it is two way it is not communication.

Example of a communication policy

1. The [Organisation] wishes to involve all personnel in its activities, to encourage their active participation in its progress, including decision-making, and to benefit by their comments and ideas.
2. The [Organisation] commits itself to the regular dissemination of information and to the encouragement of inter-organisational and interpersonal communication which is to encompass personal as well as organisational activities.
3. General aims. The [Organisation] believes that people will give of their best when they are part of a fair-minded, well-disciplined and structured Organisation which clearly sets out what is and is not expected of its employees and administers such rules impartially, without exception and in accordance with the rules of natural justice.

   The [Organisation] encourages individual recognition of all employees by name by their immediate superiors, who are required to treat those for whom they are responsible as rational human beings and with respect. Those responsible for others should make themselves available to guide, help and coach as needed. Whilst the [Organisation] will support managers and supervisors when they need to criticise and discipline their staff, it is stressed that praise should be given whenever it is warranted.
4. On appointment each employee will be given an information wallet containing.
   a) contract of employment
   b) employee handbook
   c) health, safety and fire precautions statements

d) confidentiality and Dignity at Work statements

e) disciplinary policy and procedure

f) copy of latest employee report

g) copy of latest newsletter (group)

h) copy of any departmental/divisional/site publication.

5. During employment employees will receive:

   a) annual/Employee report (annually)

   b) interim results (annually)

   c) newsletter (quarterly/monthly/two weekly etc)

   d) local departmental/divisional/site newsletter or equivalent

   e) regular management organised briefing sessions

   f) ad hoc briefing sessions as required

   g) representation at Works Council/Joint Consultative meetings

   h) copies of Works Council/Committee minutes

   i) representation on Safety/Pensions/Redundancy/Other Committees

   j) copies of Safety/Other committee minutes

   (Note: The EU requires employers with 50 or more employees to set up WORKS COUNCILS if 10% or more of their employees want this.)

6. Ongoing commitment. Management are expected and encouraged to keep their employees informed of all activities and developments in an informal manner, there being no substitute for such face-to-face communication which means listening as much as talking.

7. Employees are encouraged to take a lively interest in the activities of the [Organisation] and, should there be anything on which they have insufficient information or where they are unsure, should be encouraged to ask their immediate superior, and should they not receive an adequate answer, to pursue their query through the GRIEVANCE procedure set out in the employee handbook.

8. Feedback (by both formal and informal means) will be sought from all employees on aspects of this policy
9. Unit briefing sessions will be held regularly throughout the [Organisation]. These will be informal discussion opportunities at which everyone should be invited to participate. Questions asked during such sessions should either be answered (if known) there and then, or guidance sought and an answer provided at the next following briefing session.
10. Through the APPRAISAL procedure managers and employees are required to discuss progress over the immediately preceding period, to determine if and how improvements can be made, and to plan to cope with the requirements of the following period, identifying any training requirements at the same time. The use of this discussion to encourage open and two-way communication should not be underestimated.
11. In the event of there being items that most people would construe as bad news (e.g. laying off staff, redundancy, etc.) every effort will be made to consult with those employees, and/or their representatives, who are affected, at an early a stage as is possible. Alternatives suggested by employees will be investigated before final decisions are made.
12. Every member of management is encouraged to 'walk the job' personally interfacing with employees at all levels.

Real communication

As mentioned above true communication is needed to take place on a daily informal basis if the greatest output is to be achieved. Regular open and informal communication should render more formal means (see QUALITY CIRCLES) less necessary. However, it is important to understand what the word 'communication' really means. There is an essential difference between the terms 'information' and 'communication' – yet the two words are often used in place of one another. Often employers say they are 'communicating' when what they are doing is 'informing'. Both are neces-

sary but whilst communication can substitute for information, information cannot substitute for communication. Information is a one-way dissemination of data from A to B. It requires nothing from B other than acceptance and with employees remote from A, even acceptance may have to be assumed (which can be dangerous). True communication is a two-way process. If A and B are to communicate then the item from A must be received and absorbed by B in the way A intended. The only way A can be sure of this is by talking to B, encouraging his/her input in order to test their understanding of the item. In encouraging input in this way B can ask questions, supply comments and make suggestions, that is provide feedback which may have an impact on the subject matter. In considering B's items, A in turn may have questions, comments and suggestions. Thus instead of B just accepting what is said, both are considering the matter and communicating in the true sense of the word. A rapport or understanding (even if they disagree) has been created. Many problems in the employer:employee relationship could have been avoided had there only been proper communication between the parties. As Jack Jones, former General Secretary of the Transport and General Workers Union once stated 'he who communicates, leads'. We could turn this quotation on its head – he who wishes to lead (that is, to use a more dynamic form of management) must communicate – that is listen. The manager who states 'I know what my staff are thinking' is fooling himself unless he has spent most of the past year listening to their comments on a daily basis.

Footnote: In presenting a range of personal skills seminars, I coined and use the word 'communicaction' – that is that which employers need to ensure is present in 'communication in action', a dynamic process rather than, what is often present, a latent assumption that 'communication' is taking place.

Constructive dismissal

Basis for inclusion

Legal obligation

Background

In constructive dismissal the employee terminates employment in a way normally initiated by the employer. Effectively he or she 'dismisses themself' on the grounds that certain behaviour or action on the part of their employer makes it impossible for them to continue in the relationship. The action on the part of the employer must go to the heart of the contract, i.e. be a fundamental breach of the contract, or be the 'last straw' in a sequence of events which, when combined, make continued working for the employer by the employee untenable. If the action complained of is unfair then it will be an unfair constructive dismissal and the employee will be entitled to compensation accordingly.

Commentary

All organisations are constantly changing and decisions need to be taken altering the status quo. Not everyone will like the changes, but because an employee does not like changes which affect them this will not necessarily give them the right to resign and claim constructive dismissal.

Case study

In *O'Grady v FP Financial Management Group Services Ltd* the EAT set out four tests to demonstrate when a 'constructive dismissal' would be valid:

1. When there is a breach of the contract (actual or imminent) by the employer AND
2. When such breach is sufficiently serious (i.e. the action goes to the 'heart of the contract' so much so that continuation is impossible) or is the last in a series of incidents which damage the mutual trust and respect (i.e. the 'last straw' concept).

Then if:

3. The employee leaves because of the specific breach (and not for another unconnected reason) AND
4. Does not delay too long in taking action to terminate the contract in response to the breach a potentially unfair constructive dismissal may have occurred.

For example, if an employee were to be asked to carry out a specific task in addition to or as part of his duties, and the employer stated that providing everything was done satisfactorily the employee would be given a substantial pay rise on completion, and the employer then reneged on paying the increase despite the project being completed entirely satisfactorily, the employee would probably be entitled to resign and claim constructive dismissal. If however, he did not resign for (say) 3 months, that would probably be too long an 'acceptance of the status quo' for any claim of constructive dismissal – he would be deemed to have accepted the situation no matter how much how he complained internally. However, if after three months the employer carried out another act, e.g. took away his right to eat in the management restaurant without good cause, and the employee then resigned, that might be constructive dismissal under the 'last straw' concept – in which case the former injury (non-payment of a promised pay rise) could be counted with the loss of privilege.

Waiting too long

In the above example, because the employee initially took no action other than complaining for three months, he would be assumed to have accepted the change. The question of 'waiting too long' is an important one.

Case study

In *Jones v F Sirl & Son (Furnishers) Ltd* the employer had made a number of changes to Ms Jones' manner of working which she felt were breaches of her contract. After the last such breach she waited for 3 weeks (during which time she got another job) and then resigned, claiming unfair constructive dismissal. It was not felt, as the employer had claimed, that she had waited too long, it was as the Tribunal stated – understandable that she needed a job to earn her living.

Thus Ms Jones waited until she had another job and immediately she had that, she resigned. To some extent, this was in the interests of the employer since by finding herself another job she minimised her loss of earnings that she could otherwise have claimed. Her compensation would be limited since, assuming the new job paid at least the same salary as the old there might be no loss of earnings. However, the length of time waited after the action that generates the 'dismissal' is not set in stone.

Case study

In *Governing Body of St Edmund of Canterbury RC School v Hines,* Mrs Hines was a special needs co-coordinator and teacher who was loaded with so much extra work that it brought on an illness so that she went sick in November 1999. She did not return to work and resigned claiming constructive dismissal on 30th March. Both an ET and the EAT held that it was an unfair constructive dismissal and in these circumstances (i.e. her serious illness) she had not affirmed the contract by waiting 'too long'.

Reaction not action

Constructive dismissal requires action by an employee but this is really a 'reaction' to an action by the employer – it cannot be claimed by an employee where there has been no change to the status quo (unless of course a change has previously been promised and has not been forthcoming). Thus, in taking action that affects employee's rights, duties, position etc., employers need to be careful to ensure that such action, when added to previous actions or events, does not make the situation unacceptable to the employee. In this, as in so much else concerned with disciplining employers, it is essential to view events from the employee's perspective rather than that of the employer.

Case study

In a case against Parcelforce, one of their best employees was told that he was to transfer from his job to another within the next three days. In the area on which he worked he was able to earn the maximum productivity bonus. In the area to which he was to be transferred there was little opportunity, at least immediately, for him to earn the bonus. The effect of the transfer was that his earnings would reduce by about 40%. He resigned and successfully claimed unfair constructive dismissal.

During the hearing of the above case one of the tribunal members asked the supervisor who took the decision to transfer the employee, how he would have liked to be told that within three days his salary was to be cut by 40%. 'I wouldn't like it' he replied – which begs the question 'if **you** wouldn't like or accept it, why should you expect **him** to accept it?'

Postscript

That case demonstrates another classic mistake which is seen in a small but important percentage of tribunal cases. The effect of the action is that the employer has lost the services of one of their better employees. To lose a tribunal case where the employee lost was not up to much is one thing, but to lose a case where the person was acknowledged as one of your better employees is downright stupid. After all there was a simple solution – 'ring fence' the existing bonus for at least a three month period.

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Contract

Basis for inclusion

Legal obligation

Commercial necessity

Background

Those who the employer wishes to work under a 'contract of service' should be given a contract of employment (see PSEUDO-EMPLOYEES for guidance re others). Even if this were not a legal requirement (which it has been since 1963), it would be advisable to provide a contract of employment so that at least each party knows what is expected of them and what the rights are of the other.

Commentary

The Employment Rights Act 1996 requires employees to be given a written statement of employment particulars within two months (eight weeks) of the commencement of their employment. The statement must contain certain core information. The requirement is covered in most cases by the issue of a Contract of Employment.

Legally required information:

1. Names of parties (employer and employee).
2. Date of commencement of employment and of continuous employment (where an employee worked for a, for example, differently named but related employer so that the whole employment is continuous, or where the Organisation for which they originally worked is now owned by the employer, and this date evidences the commencement

of what is regarded as one period of continuous employment – see TUPE).

3. Job title (or if none is available, a brief description of the duties).
4. Pay, pay scale, method of payment and pay interval. (If the employer has 20 or more employees, itemised pay statements must be provided.)
5. Place of work, or the required or permitted places of work. organisations requiring their employees to move from one place of work to another, including working abroad, need to consider carefully how this requirement should be drafted.
6. Hours of work. (Employees can only be required to work more than 48 hours per week if they have signed a WORKING TIME Regulations opt out. No pressure can be exerted on employees to sign such an opt out.)
7. Holiday entitlement and arrangements regarding HOLIDAY pay (employees must be provided with four weeks paid holiday which must be taken within the holiday year).
8. SICKNESS entitlement and conditions regarding injury and sick pay*.
9. Arrangements regarding PENSIONS (if any)*.
10. Notice period (employees must be given a minimum of 1 weeks notice for each year's service to a maximum of 12 weeks)*.
11. If the contract is not open-ended, i.e. it is for a fixed term, a statement of the expected length and end date.
12. Particulars of any collective agreements*.
13. Particulars of the disciplinary rules and procedure*.

** Details regarding these items can be contained in other reference documents but are best addressed in the contract.*

In addition, all changes to the above information must be notified in writing to each employee individually within one month.

Wording

Whilst the above should be fairly straightforward, in most organisations there can be a variety of types of employment, including full-time weekly and monthly paid, part-time and/or intermittent, casual and fixed term contract employees. Inevitably, since there will be different benefits, obligations and rights applicable to each category, there need to be different contracts. Two examples follow.

Draft Contract of Employment for full-time permanent employee paid monthly

CONTRACT OF EMPLOYMENT MONTHLY PAID **[ORGANISATION]**

1. Your employer is _____

2. Your job title is _____

3. Your place of work is _____

4. Date commenced continuous employment _____

5. Date of this contract _____

6. Remuneration. _____

Your annual salary is £(Sterling), one twelfth of which will be paid directly into your bank account on or before the [day] of each month, net of the normal deductions for income tax, national insurance, etc.

7. Hours of work

Normal office hours totalling [35] per week are [start and finish time], with one hour unpaid for lunch. In the event of any individual working times which vary from the above being required, these will be confirmed separately in writing.

ALTERNATIVE WORDING A – WHERE NO OVERTIME IS PAYABLE

However, because of the nature of the position, flexibility is required and you are expected to work such extra hours [up to a maximum of 48 per week averaged over 17 weeks – or other period agreed locally] as may be necessary from time to time.

OR

B – WHERE OVERTIME IS PAYABLE

In the event of overtime being necessary it must be previously Authorised by your manager. It will be paid at basic rate until the total (including hours in respect of holiday and approved sickness and other absence) reaches your normal contracted hours for that week. Hours worked in excess of this figure will be paid at the rate of time and a half for weekdays and double time for weekends and public holidays.

Unless you have signed an 'opt out' you must not work more than 48 hours per week (averaged over a 17 week period).

8. Other employment

You may not be connected with, engaged in or concerned with, any other business or public office which may or might interfere with your performance of your job, or be in conflict with the best interests of [the company] without its prior written agreement. Because the 48 hour rule (see above) applies to each individual person you should inform us if you have other jobs since the hours worked elsewhere count towards the maximum of 48.

9. Holidays and sickness

The entitlement to and administration of holidays and sickness are set out on a sheet attached to and forming part of this contract [or in a HANDBOOK]

10. Grievance and Disciplinary procedure

The arrangements for the administration of discipline and for use of the grievance procedure are set out in the sheet attached to and forming part of this contract [or in a Handbook].

11. Expenses

Any EXPENSES properly incurred by you on behalf of the company will be reimbursed subject to the authorisation of a properly completed expenses form, available from [ ] and supported by appropriate receipts. If VAT receipts are not submitted [the company] reserves the right to refund only the net amount.

12. Pension Plan

Details are available from [ ]. You have the option to join [the company's] contracted-out pension plan [within 3 months of your start date] [OR

We do not operate an occupational pension plan but we have set up a stakeholder pension which you are entitled to join.]

13. Life Assurance cover

Life assurance cover equal to [4 times your basic annual salary] is provided by [the company] on actual commencement of employment. The amount of cover is adjusted to reflect your salary on each subsequent [date]. You will be informed should our insurers impose any special conditions on this cover.

14. Personal property

You are expected to take care of your personal belongings whilst these are on company premises. The company cannot accept responsibility for loss or damage other than where such loss or damage is due to its negligence.

15. Confidentiality

Employees (and former employees after the termination of their employment), except in the proper course of their duties, may not divulge or use to the detriment or prejudice of [the company] any trade secret or any other confidential information concerning the business or affairs of [the company] and will be required to sign a GARDEN LEAVE clause.

16. Notice

ALTERNATIVES A – SENIOR MANAGEMENT

This appointment is subject to three months written notice of termination by either side.

OR

B – OTHERS

You are entitled to receive the following periods of notice of termination of employment after the service stated:

- Less than 1 year and up to 4 years: 4 weeks notice.
- More than 4 years: 1 week for each year of continuous service up to a maximum of 12 weeks.
- You are expected to give [the company] not less than 1 week's notice of termination during any trial period, and not less than 4 week's notice thereafter.
- You may retire at any age between 60 and 65. [This requirement would need to be re-assessed when Ageism is introduced.]

17. Health & Safety

Your attention is drawn to the Health and Safety policy and procedure, a copy of which is attached to this contract. In the event of any employee becoming aware of, and wishing to report a safety hazard, dangerous practice or other such problem, this must be first reported to the appropriate person within [the company]. Failure to follow this procedure will be regarded as serious misconduct.

18. Equal opportunities

[The company] is an equal opportunities employer and your attention is drawn to the Equal Opportunities [DIGNITY AT WORK] policy, a copy of which is attached to and forms an integral part of this contract.

[19. Car. Your position entitles you to the provision of a car provided by the company. Details of the arrangements for its provision and control are set out in a sheet attached to and forming part of this contract. In driving a VEHICLE on behalf of the employer you will be subject to a number of rules full details of which you will be given. You are required to produce your driving licence on appointment and regularly thereafter.]

ATTACHMENTS

The attached sheets [Holidays, Sickness administration, Discipline and Grievance procedures, Confidentiality undertaking, Health and Safety, Equal Opportunities and Vehicle provision and administration] are an integral part of this, your contract with [the company].

[OR Full details of the items referred to in outline only in this contract can be found in the Employee Handbook accompanying the issue of this contract. You are urged to read this Handbook and to keep it safely for later reference.]

Please ensure you read and understand these documents and sign below to acknowledge receipt and acceptance of this Contract of Employment (and attached sheets) as the terms and conditions governing your employment with [the company].

Signed _____

Date _____

Employee _____

Signed _____

Date _____ [on behalf of [the employer]

Once a contract has been signed by both parties it becomes binding and, at least in theory, can only be changed by agreement of both parties. Unilateral changes of material matters by the employer may generate dispute and disagreement, eventually leading to tribunal action. It is essential to try to foresee any likelihood of change, and, if this is likely, to consider how to avoid disagreement before there is any commitment. However, ultimately the employer may be able to change even material terms if consultation has proved impossible.

Case study

In a multiparty case against the London Borough of Hackney the complaint was that the Borough had unfairly dismissed 550 people. Previously, in order to recruit suitable personnel, Hackney had paid two increments over the nationally agreed rate for their jobs. Government pressure meant the Council had to cut costs and the only method of doing so (rather than invoking compulsory redundancy or cutting services which were not permissible under the Borough's published commitments) was to remove this additional payment – colloquially referred to as 'the Hackney factor'. They tried to negotiate but the Unions would not discuss the matter. Hence Hackney gave all those affected 13 weeks notice (i.e. a week over the statutory maximum required) to terminate their contracts, but stated that if, on the day after the notice expired, employees reported for work, they would be deemed to have continued their employment but on a new contract (identical in every way to the old contract but without the additional increments). The employees complained that this was unfair dismissal and breach of a statutory right (deduction from pay without authority).

A tribunal held that Hackney were entitled to take the action they had.

The employer's actions did not amount to 'duress' since there was nothing illegal about Hackney's actions – they were entitled to terminate the contracts. Ultimately, if one party will not discuss the matter or there is a stalemate, the employer can bring the contract to an end fairly, providing, of course, at least the notice stated in the contract (or provided by legislation) is given.

Employment contract for full-time permanent employee paid weekly

CONTRACT OF EMPLOYMENT WEEKLY PAID **[ORGANISATION]**

1. Your employer is _____

2. Your job title is _____

3. Your place of work is _____

4. Date commenced continuous employment _____

5. Date of this contract _____

6. Remuneration. _____

Your wage is calculated at the rate of £(Sterling) per hour/week and is payable one week in arrears directly to your bank account each [day]. Payment is only made against weekly time-sheets covering the period from [day] to the following [day]. These time-sheets must be Authorised by your manager and passed to [office] by [time/day] for payment the following week (unless otherwise advised).

7. Hours of work

Normal office hours ([number] per week) are [times] Monday to Friday as agreed with your manager, with one hour unpaid for lunch. In the event of overtime being necessary it must be previously Authorised by your manager. It will be paid at basic rate until the total (including hours in respect of holiday and approved sickness and other absence) reaches your normal contracted hours for that week. Hours worked in excess of this figure (to a maximum of 48) will be paid at the rate of time and a half for weekdays and double time for weekends and public holidays.

Unless you have signed a Working Time regulations opt-out you must not work more than 48 hours per week averaged over a 17 week period [or other such locally agreed period].

8. Holidays and sickness

You are entitled to the basic four weeks paid holiday which includes all public and Bank holidays. Holiday absence (other than for public or Bank holidays) must be Authorised in advance in writing by your Manager.

You are not entitled to any company payment for absence due to sickness. [The company] is required to pay Statutory Sick Pay (SSP) to assist employees who are unable to carry out their obligations under the contract of employment because of genuine sickness only. The company is responsible for paying SSP for up to 28 weeks in any one year, but can only make such payment if it is convinced that the sickness is genuine. Payment cannot be made to those claiming in respect of absence which does not seem to be a result of genuine sickness. To ensure [the company] knows of your absence and can pay SSP correctly:

i) You (or someone on your behalf) must inform your manager as soon as practicable on the first day of your absence, preferably by telephone, and thereafter keep [the company] regularly informed of your progress and likely date of return.

ii) You must complete a self-certification form available from [office], to cover every day of your absence, and, should the absence continue, obtain a doctor's certificate in respect of the days in excess of 7.

You may be interviewed on your return and/or referred to [the company] Doctor for a second opinion. Should the company feel that the absence was not as a result of genuine sickness, SSP cannot be paid. If you feel this decision is incorrect you have the right to appeal to a employment tribunal.

9. Grievance and Disciplinary procedure

The arrangements for the administration of discipline and for the grievance procedure are set out in a sheet attached to this contract and form part of it [OR in the Handbook].

10. Expenses

Any expense properly incurred by you on behalf of [the company] will be reimbursed subject to the authorisation of a properly completed expenses form, available from [office] supported by appropriate receipts. If VAT receipts are not submitted [the company] reserves the right to refund only the net amount.

11. Personal property

You are expected to take care of your personal belongings whilst these are on company premises. The company cannot accept responsibility for loss or damage other than where such loss or damage is due to its negligence.

12. Confidentiality

As a condition of your employment you may be asked to sign a confidentiality undertaking.

13. Notice

You are entitled to receive the following periods of notice of termination of employment after the service stated:

- After one month but less than one year: 1 week.
- One year or more: 1 week for each year of continuous service up to a maximum of 12 weeks.

You are expected to give [the company] not less than 1 week's notice of termination.

14. Health & Safety

The attention of all employees is drawn to the Health and Safety policy and procedure, a copy of which is attached to this contract [OR is set out in the Handbook]. In the event of any employee becoming aware of and wishing to report a safety hazard, dangerous practice or other such problem, this must be first reported to the appropriate person within [the company]. Failure to follow this procedure will be regarded as serious misconduct.

15. Equal opportunities

[The company] is an equal opportunities employer and your attention is drawn to the Equal Opportunities policy, a copy of which is attached to and forms an integral part of this contract.

ADDENDUM

The attached sheets [OR Handbook] are an integral part of this, your contract with the company.

Please ensure you read and understand these documents and sign below to acknowledge receipt and acceptance of this Contract of Employment (and attached sheets) as the terms and conditions governing your employment with [the company].

Signed _____

Date _____

Employee _____

Signed _____

Date _____ [on behalf of [the employer]

Administration

Ideally, the employee and employer should sign both copies of the contract and each party should keep one copy. Some employees may refuse to sign a contract. To ensure that it can be later proved that the employee was given the contract (since often in tribunal cases ex-employees claim they 'did not know' what was required of them) a third party should be invited to witness the handing over of the contract and to record this fact in a statement to be placed in the subject employee's file. It may also be advisable to check that the employee can read and understand the contract and contract documentation, otherwise they might later be able to claim that although they were given a contract they had no idea what was in it since they have reading difficulties. (Similar considerations should be adopted when giving warnings etc.)

Usually, if a person signs a contract without reading it they are held by it. The legal maxim is 'for reasons of certainty, a signatory to a written contract is treated as having agreed to its terms, however onerous, whether or not he has read it'. It would be wise not to rely on such a maxim and to follow the above suggestions regarding explaining the contract and being able to prove the subject was given it.

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Corporate social responsibility

Basis for inclusion

For listed PLCs, requirement under the Stock Exchange listing agreement

Background

Employers operate within society and since they use resources, create scarcity by such consumption. There is an expectation that such resources should be used wisely and efficiently. Many processes, not only use resources, but in the process create by-products which may harm the environment. Increasingly, operations and operators (companies and their Boards of directors) are required to take account of environmental matters and the potential and detrimental effect such actions can have on the environment. Employers also create one of the most important requirements of society – employment without which none of the public services could be provided. Increasingly, larger/higher profile companies provide a public statement (usually published within their Annual Report) of their attitude to, and means of attaining, some level of Social Responsibility. This is a trend which is likely to continue not only for such companies but also for far more employers since it will come to be expected, not least by the 'good employees' – those who progressive employers should wish to recruit.

Commentary

In a competitive employment market, those applicants who we can refer to as the 'above average' employees who many employers will wish to attract will want to know:

- what the organisation stands for;
- how it wishes to trade (attitude on safety, value, quality etc);
- how it interacts (i.e. with society as a whole as well as with suppliers, customers, employees, shareholders etc); and so on. Companies that fail to address this need may find they lose their cutting edge. This is not meant to imply that a few words in an Annual report is all that is needed – any paper commitment must be evidenced in practice. The first essential of such a programme is a willingness to commit to the principle of having a duty to trade in a way that enhances society, uses materials in as 'non-wasteful' a way as possible, treats all-comers with respect and so on.

NOP conducted a survey for the Institute of Directors in June 2002 and discovered that:

- in roughly 50% of the 500 organisations contacted, the Board discussed social responsibility (66% of large companies),
- 60% discussed environmental issues (66% in large companies and 85% of those engaged in manufacturing),
- 36% had a Board member whose responsibilities included social issues,
- 48% had a Board member whose responsibilities included environmental issues.

Adverse publicity

Failing to appreciate the power of public opinion or perception could be dangerous and costly. There may be a great temptation to stick with old attitudes etc. However, directors/owners of organisations are paid to drive the company forward which must entail a willingness to embrace the new and the risky. Directors are paid (sometimes highly) in part to take risks

(albeit having first analysed the opportunities and the dangers fully) since only if they do are the rewards for the company likely to be high. Legal changes are often unwelcome, and whilst such a reaction may be understandable, those who persist in 'opposing' the trend may do their companies a disservice. Such changes cannot be resisted and it might be more beneficial (and economic) to accept the new requirements and to assess whether there are any ways in which the company can use them to its own advantage.

Case study

A solicitor employed a number of staff and, in addition, advised clients on employment law . However, within his own organisation not only were all the requirements of employment law totally ignored, it seemed that this was due not to oversight but to a decision not to abide by the legal requirements.

At a tribunal, brought by an employee who had been dismissed, questions regarding the provision of contracts, disciplinary procedures, equal opportunity policies etc. and even the proceedings themselves were treated by the employer with disdain – even arrogance. The tribunal found in favour of the employee and awarded her several thousand pounds compensation.

Note: Everyone is entitled to their own opinion of the law and many will feel that some aspects of employment protection (particularly new rights) are excessive. They have every right to their own opinion, nevertheless the law is the law, ignorance is no excuse and non-compliance can be costly.

Disdain for tribunal proceedings may also be a personal right – it is hardly likely to win friends and influence people. In any event tribunals only interpret the law.

Directors may be excused for antipathy towards legislation – and railing against it with the lawmakers may assist changes being made – but refusing to work within it is foolish and costly, as well as being a breach of the duty they owe to their shareholders – this is part of their social responsibility and challenge: to run with the changes and use them to their organisations advantage.

The sexual revolution

As the 21st century progresses, the 'sexual glass ceiling' will be shattered as more and more women occupy more and more senior positions. Once again this development will require fresh approaches not least in the area of personal and employment relationships . There is little doubt that faced with the extensive rights of women to both leave and pay) when they are pregnant and new mothers, that some employers (as already happens) will not employ women of child-bearing age. Whilst this is illegal if the woman is the best person for the job, (since it would be sex discrimination) there is no doubt it occurs. Indeed, during seminars, I have been told on several occasions (often by women themselves and with their tacit approval) that this is their company's attitude!

Legislation – particularly in social engineering – can have the opposite effect to that intended. Conversely, the company that embraces diversity may find benefits.

Case study

It was reported in the Sunday Times in January 2003, that there is a company in Chesterfield which has 35 employees – and 35 different shifts. The employer has managed to create a situation where every individual's preference regarding hours worked can be met. Over the 5 years that the scheme has been working, productivity has doubled.

It may be easier to arrange such flexibility in a small company although it must be said that with larger numbers, particularly where jobs are replicated, such flexibility may actually be easier to achieve. The essential ingredient is not size but the will to make the system work. This is another challenge in terms of social responsibility.

Jollity

We spend nearly half of our waking life at work. Work has become for many a social activity, even though it is also an economic necessity. A majority of lasting friendships, partnerships and even marriages are formed through workplace encounters. Indeed, so important a part of life can the working environment become that let alone financial consideration many are unable to cope with redundancy simply because as well as the stigma of 'not being wanted' they have to face the loss of the social interaction that working provides.

Since the workplace is where a considerable amount of time is spent, ideally the environment should be as convivial as possible. Perhaps 'jollity' pushes the point too far, but many well-regarded leaders endeavour to create a situation where at least work is enjoyable. The Work Foundation (formerly the Industrial Society) interviewed a cross section of workers for their report 'New Community of New Slavery? The Emotional Division of Labour'. The report's conclusion was that employer's needed to focus on sociability which help create productive, efficient and innovative employees. One in three of those surveyed stated that work was the most important part of their life. 'For many, home is a place of oppression, whilst work is a place of liberation'.

Any environment that is enjoyable is likely to be one in which employees will be motivated to produce their best work, to work together (KEEPING THE TEAM) and be encouraged to make suggestions for the improvement of existing, and development of, new products or services. It is likely that costly labour turnover can be reduced (retention of quality staff being currently recognised by many leading organisations as of vital importance) -whilst the reputation of such an employer, creating such an environment,

may aid the recruitment of the 'best' people. That this should be so can be argued by considering the opposite type of environment. It would hardly be surprising if employers known or regarded as 'poor' experienced difficulty in recruiting decent calibre personnel. In July 2004 the DTI launched the Corporate Social responsibility academy to provide education, training and development for managers in both public and private sector organisations to help them, in turn, incorporate CSR activities into their business practices. The launch followed the recommendations of a 2003 report issued by a working group including representatives of Business in the Community (BITC), the CBI, the TUC and the Chartered Institute of Personnel and Development. Deputy Chief Executive of BITC, Peter Davis, commented on the Academy's launch, "this is an initiative to fill the gap that exists between corporate strategy on social/environmental responsibility and management practice".

Counselling

Basis for inclusion

Commercial advisability

Liability defence

Background

Whether as a result of investigations into ADDICTIONS, CAPABILITY, SICKNESS, or to avoid STRESS etc., employees may need, and/or benefit from, counselling. Such a service can be provided from internal resources, or from external experts.

Commentary

Employee assistance (counselling) programmes are now operated by around 80% of the top 500 American companies and are becoming increasingly popular in the UK. A recent survey indicated that approaching 200 UK companies had such programmes, finding them of considerable value not only helping to solve problems, but also in improving workplace relationships generally. If nothing else the programmes should indicate that the employer cares about the welfare and long-term health of its workforce. Whilst the employer sets the programme up and provides information on how advice can be sourced (that is via a comprehensive communication of both problems and suggested alleviation), the process relies on the employee making the contact and acting on the advice. Buying an external resource with guarantees of confidentiality etc., should encourage employees to use the system with confidence that nothing will be relayed to the employer without their permission.

Internal resource

Whilst it is entirely possible to provide an internally staffed employer-funded counselling service, this can pose problems – both of confidentiality and of a preference that the employer should not 'interfere' in personal affairs. If, despite assurances of a wish to help, the latter reaction is maintained, then no attempt should be made to force the employee to use the service as it is unlikely to achieve anything – indeed it could make the whole situation worse.

Patient and low key explanation of the impact such problems are having on the business and the employee's colleagues (rather than passive acceptance of the 'personal prying' allegation) may be the only way in which the logic of the interest can be rationalised.

Stress

Until recently there had been a steadily increasing number of stress claims most of which were settled out of court by the payment of large sums of compensation to employees 'injured' as a result of them being placed in stressful situations without support etc. In late 2001, however, four cases were considered by the Court of Appeal which rejected three of the claims and only allowed the fourth with 'some hesitation'. The comments made by the Court are set out in the STRESS section, however, one of their most valuable recommendations was that where an employer provided stress counselling (presumably on a free basis) to employees, the employer would be unlikely to be found liable for stress claims. Setting up such a service would seem to be a logical form of insurance against such claims. Providers of private medical cover, as well as liability insurers, increasingly offer such counselling services and full information and easy access should be provided to all employees.

Employers need to be proactive. If they suspect a person may be suffering from stress then they might take the initiative and suggest the employee attends counselling sessions. In the *Barber v Somerset County Council* case the House of Lords said that the 'overall test is still the conduct of the reasonable and prudent employer, taking positive thought for his workers in the light of what he knows or **ought** to know'.

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Data protection

Basis for inclusion

Legal requirement

Background

The Data Protection Act 1998, which updated and considerably enhanced the original Data Protection Act, covers not only the computerised records covered under the previous Act, but also personal information held in structured manual records.

Commentary

Individuals to whom personal information relates and which information is required for them to be helped by their employer, have the right to be advised:

- that personal information on them is being collected;
- for what purpose the information is being used; and
- to whom such information may be made available.

The information itself (for example, an employee's personal details held in the Personnel or Human Resources Dept) must be:

- protected;
- retained only whilst needed; and
- made available on a restricted 'need to know' basis.

The eight principles

Generally, those holding data must comply with 8 principles. The data must be processed and kept:

1 fairly and lawfully;

2 for restricted purposes and not be incompatible therewith;

3 accurately;

4 on adequate and relevant bases and not be excessive;

5 only for as long as is essential;

6 in line with the subject's rights;

7 securely; and

8 by the processor and not transferred without protection.

Further, if sensitive data (i.e. concerning racial or ethnic origin, political opinions, religious beliefs, trade union membership, health, sex life, criminal proceedings or convictions) is to be processed, this can only be held:

- with the explicit consent of the individual; or
- because it is required by law to be kept for employment purposes;
- it must be processed to protect the interests of the data subject or another; or
- it deals with the administration of justice.

Implementation

Employers systems need to be reviewed to ensure that they comply with the requirements of this Act – if only since failure to do so could mean their directors facing penalties.

Administrative action

1. Applications for employment could carry a wording such as: 'The [employer] will keep personal information on employees and provide such information only on a need to know basis as and when required. All employees have the right to inspect such information and, if necessary, to require corrections should such records be faulty. By accepting a job offer employees expressly agree to our retaining such information which can include sickness and health records, ethnic origin, membership of a trade union and disciplinary matters, if any.'
2. A notice including the above wording could be sent to all existing employees indicating that unless they have an objection (which should be lodged with a named person by [date]) this will be deemed to be part of the contractual employment relationship with effect from [date – say a month hence].
3. Having been pruned to remove all non-essential material, personnel records should be kept securely with access only being made available on a need to know basis. A record will be kept of all access granted to such records.

Anyone keeping personal data (whether computerised or in hard copy format) must apply for inclusion on the Register of Data Controllers. It is suggested in the Code of Practice issued under the Act by the Information (Data Protection) Commissioner that each year employers should provide employees with details of information held about them and ask them to confirm that it is current, and invite them to correct anything which is incorrect. A subject wishing to access their own information (other than under this annual examination) must give written notice. The inspection must take place within 40 days and the employer can make a charge of up to £10. If the employer does not comply with an access request it can incur a £5,000 fine with personal liability on directors or managers who, it can be shown, were party to the failure (i.e. they consented to it or were negligent in dealing with the matter).

Manual data gathered on or after 24th October 1998 is already subject to the Act, and from October 2007 ALL data (without exception) will be subject to these requirements.

Footnote

Neither the Act nor the Code of Practice issued by the Data Protection Commission are easy to understand. In the aftermath of the Soham murder case the Commission is to publish new and user-friendly guidance to obligations.

Deaths

Basis for inclusion

Moral obligation

Background

The death of an employee is always untimely whether it is anticipated or unexpected, and needs to be handled with tact, discretion and sincerity, which will be easier to achieve if eventualities are considered and planned for in advance, with alternative tactics (and their results) considered and determined when there is no urgency.

Commentary

Where the death of an employee is anticipated, this gives an opportunity for consideration of alternative steps in advance of the actual death.

Suggested procedure

1. Contact the employee (or a nominated member of their family, should the employee not be capable of dealing with the situation) to ask whether they wish to be made aware of entitlements.
2. Only if the employee and the family wish to discuss it, prepare a schedule comprising:
   a) Benefits and options under the pension scheme. These should be carefully examined in conjunction with pension advisers since it may be that by taking an immediate pension during

life, rather than obtaining death in service benefits, the interest of the dependents may be improved, although each case must be reviewed on its merits.

b) Benefits under a Life Assurance scheme (if separate from the Pension arrangements).

c) For employees not covered by a Pension Scheme, any arrangements for the granting of an ex-gratia allowance. This is usually paid only to longer service employees or their dependents who, through no fault of their own, were unable to join a pension scheme (thus, employees who were invited to join the pension scheme but declined would not normally be eligible). It needs to be made clear to the employee and the dependents that, as an ex gratia allowance, should the organisation control change, it may cease.

d) For employees not covered by the Pension Scheme or the ex-gratia allowance, a gift on death of [amount] per year of service is payable.

e) Payments due under any benevolent fund or voluntary contribution scheme.

f) Accrued holiday pay, sickness pay and any other entitlements.

g) Any rights under share option, purchase schemes, etc. Share ownership and arrangements for transmission or transfer of shares following death may also be outlawed.

3) Visit the employee and/or family with the schedule and explain the contents making repeat visits as necessary.

Although the DSS (in leaflet PP4) states that advice given by an employer regarding pension matters is not subject to the restrictions of the Financial Services Act (which states that the provision of financial advice may only be carried out by an Authorised person), it may still be preferable for such advice to be given by a representative of the Pension scheme advisers. It is more likely that they can provide comprehensive and accurate answers to the type of questions likely to be raised.

Further, if the employee has assets likely to exceed in value the inheritance tax threshold (£263,000, April 2004), the family should be advised to consult a solicitor (the address of the organisation solicitor may be provided if no other is known to the family), so that probate preparations can be commenced and affairs arranged to minimise taxation. This may raise difficulties regarding the payment of outstanding monies, for example, accrued wages, holiday pay etc., on death. If death is certain it may be helpful to pay such amounts over immediately. If they are not paid until after death they will probably form part of the estate of the deceased and thus should be declared for probate purposes. In addition, tax may be required to be paid on them, although this may be less significant than the fact that it may be several months before probate is obtained and the assets can be distributed by the executor(s).

If requested, it may be advisable to revisit the family as requested. If decisions are made by the family, advise those involved both within the Organisation and amongst its advisers, to ensure all relevant benefits are paid swiftly. This would also provide an opportunity for the employer to check that no documentation (other than the death certificate) is outstanding (for example, birth, marriage, change of name certificates and so on). If such certificates are required, suggest the family find and provide them immediately, and that they advise the Organisation immediately death occurs, and provide it with a copy of the death certificate.

The family should be advised that the Organisation is available and ready to help if it can – all they have to do is to ask.

Sudden death

Although it may appear distasteful to discuss benefits whilst the employee is still alive, experience indicates that, in some cases, their presence can help in this regard since many wish to be aware of, and plan for the disposal of, sums due. However, where an employee dies suddenly, trying to communicate complex figures and options to the relatives may be much more difficult. Indeed, it is possible that it is best left until, say, after the funeral, although this should be explained, with the choice left to the family.

Suggested procedure

1) Advise the family that the Organisation is available and ready to help if it can.

2) If any death benefit, e.g. a death in service gift, is payable, prepare a cheque immediately the news is known, made payable to the next of kin, and take it to the family.

3) When making contact with the family, check if there is a close relative (who may be less affected by the loss than the immediate family), who can act (if preferred by the family) as liaison between the family and the Organisation.

4) Check whether the employee (particularly if a member of the pension scheme) completed an Expression of Wish form (that is a form which enables the employee to nominate whom they wish to receive the benefits to which they are entitled under the scheme), and, if so, pass to the Trustees.

5) Prepare a list of benefits payable as listed under item 2 in the Anticipated Death procedure, and follow other items in that procedure and in the commentary following it.

6) If the family seems to be short of money and the death in service gift is less than £1,000, review with [chief executive] the possibility of making an advance of £1,000 from other benefits payable, to ensure family has funds for immediate living and for funeral expenses. If agreed, pay such amount with a covering letter stating it is an advance.

7) Make it clear that should any counselling be required, the Organisation is ready to help, but has no wish to be intrusive.

Work-related accident causing death

Where death is caused by an ACCIDENT at work, the potential interests of the organisation Employers Liability insurers need to be considered. To avoid infringing the requirements of the policy, most insurers will not wish anything to be said or implied which may indicate an acceptance of liability. The requirements of the policy should be checked.

1) Advise the insurers of the accident via an incident or claim form. Also advise the insurers that the actions listed in the Sudden Death checklist, as set out above, are to be implemented.
2) If an advance is to be made in respect of benefits payable, the insurers may require the letter sending the cheque to be marked 'Without prejudice' in order to safeguard their position in the event of any claim.
3) Follow the procedure set out in the Sudden Death checklist.
4) If the employee was covered by any accident policy set up by the Organisation, advise the family that there may be a payment under this policy once the insurers have reviewed the circumstances of the accident.

All deaths

As well as the particular items related to the deaths as set out above, there are general items which need to be addressed in all cases.

1) Advise work colleagues of the event and of the family wishes, re any collection, etc.
2) Give internal Newsletter editor (if applicable) synopsis of work career for use in Obituary column.
3) Obtain a copy of the death certificate.
4) Advise payroll department requesting payment of all outstanding sums under the contract and issue of P45.

5) Send P45 to local tax office (advising them if further sums are payable – e.g. in respect of bonuses not yet calculated, etc.).

6) Send contractual sums outstanding to the family, advising them that they should check the disposal of such sums with the executors of the employee's estate. Explain P45 has been sent to local Inspector of Taxes, give address, tax reference number and employee's National Insurance number.

7) Establish date of funeral, arrange for flowers (or follow employee or family wishes re flowers/donations etc.) and attend funeral.

8) One month after funeral, telephone family to maintain contact (if no other contact made).

9) Add name of anyone in receipt of pension as a result of the death to the mailing list for contact after cessation.

Dignity at work

Basis for inclusion

Legal (and moral)obligation

Background

Employers must devise and promulgate a policy/procedure aimed to eliminate discrimination. Usually named Equal Opportunities, it may be better, to ensure all unacceptable activities, for example, BULLYING, FIGHTING & HORSEPLAY, Harassment etc. are highlighted and prohibited, to use the title Dignity at Work. Faced with a claim under any of the above headings a tribunal is required to ask to see the employer's Equal Opportunities (or Dignity at Work) policy. Not having such a policy will not necessarily lose the case but it may be difficult for it to be defended. The employer will need to prove that they informed employees that certain activities etc. were unacceptable.

Commentary

Both employer and employees may have a liability to an employee (or ex-employee) who has been injured by discrimination. Employers need not only to devise a policy to curtail the offence but ensure everyone knows, understands and above all abides by it. In addition, for the employer to be able to defend a claim, they must be able to show that they regularly checked compliance with the policy and took firm and prompt action in the event of any transgressions.

It has been suggested that employers should adopt a 10 point action plan to make equal opportunities an automatic and integral part of their operations, and to try to ensure that everyone complies with the anti-discrimination legislation.

1. Develop a policy.
2. Review recruitment, selection and promotion procedures regularly.
3. Draw up clear and justifiable job criteria.
4. Devise an action plan, including targets.
5. Monitor progress in achieving objectives.
6. Train staff responsible for recruiting and selecting employees.
7. Consider the organisation image when there is a failure to comply.
8. Use flexible working (particularly for those returning from maternity leave and/or with family commitments) including the provision of special equipment and facilities for the disabled*.
9. Link with local schools and community groups.
10. Use pre-recruitment training to prepare potential applicants for selection tests and interviews.

* *Under the Access to Work scheme employers are able to obtain grants of up to 80% of the cost of obtaining equipment etc., to help enable the disabled to work, or 100% to enable an existing employee to continue to work.*

Example of policy

1. [The company] is committed to the policy of equal treatment of all employees and applicants, etc., and requires all employees, of whatever grade or authority, to abide by this general principle and the requirements of the Codes of Practice issued by the Equal Opportunities Commission, the Commission for Racial Equality, under the Disability Discrimination Act, (and, in Northern Ireland, the Fair Employment Commission).

2. [The company] will not tolerate discrimination on any of the following grounds:
   a) by treating any individual on grounds of sex or sexual orientation, race or colour, marital status, nationality or ethnic or national origin, religion, disability or membership or non-membership of a Trade Union, less favourably than others.
   b) by expecting an individual solely on the grounds stated above to comply with requirement(s) for any reason whatsoever related to their employment, which are different to the requirements for others.
   c) by imposing on an individual, requirements, which are in effect more onerous on that individual, than they are on others – e.g. applying an unjustifiable condition which makes it more difficult for members of a particular race or sex to comply, than others not of that race or sex.
   d) by victimisation of an employee.
   e) by harassment and/or bullying of an employee (which for the purposes of this policy, and the actions and sanctions applicable thereto, is regarded as discrimination).
   f) by any other act, or omission of an act, which has as its effect the disadvantaging of an employee or applicant against another, or others, purely on the above grounds.
3. [The company] will immediately investigate all claims of discrimination on the above grounds, and, where such is found to be the case, require the practice to cease forthwith, make good damage or loss (if necessary), and investigate any employee accused of discrimination.
4. Any employee found guilty of discrimination will be instructed to desist forthwith. Since all discrimination is against company policy, any employee offending will be dealt with under the disciplinary procedure. Unless assurances of future non-discriminatory actions, speech and attitudes are forthcoming, an employee repeating any act of discrimination may be dismissed.

5. [The company] recognises the right of an employee to belong to, or not to belong to, a Trade Union, and membership or non-membership of such a Union, will not be taken into account in any way during the career of the employee.

6. [The company] commits itself to the employment of disabled personnel whenever possible, and will treat such employees in aspects of their recruitment and employment in exactly the same manner as other employees, the difficulties of their disablement permitting, making reasonable adjustments wherever necessary. Assistance will be given, wherever reasonable and possible, to ensure that, disabled employees are helped in their journeys to and from their place of work, in access to their workplace, in gaining access to the facilities on company premises, and in progressing in their career, subject only to the opportunity existing, the applicant's suitability, talent and wish for it.

   Appropriate training will be made available to such personnel who request it. [The company] is keen to hear ideas whereby its facilities and procedures can be made more user-friendly for the benefit of the disabled.

Note: Under the Disability Discrimination Act it is also illegal to victimise any employee because of their efforts to help ensure the rights of the disabled.

Complaints procedure

1. In the event that any employee feels that (s)he has suffered discrimination in any way, the company's Grievance Procedure should be utilised.

2. If the complaint is against the employee's own immediate or other superior, confidential application should be made to [name/position], who may authorise immediate reference to the next tier of management if this seems appropriate in the circumstances.
3. In instances of sexual harassment, as far as possible, the anonymity of the complainant should be protected.
4. Any employee who discriminates, bullies or harasses another, may be liable for payment of damages to that person, in addition to any damages payable by [the company] should it have failed to ensure the practice ceased forthwith.

Note: Under the Criminal Justice Act 1994, a criminal offence of harassment was created. This could mean employees who harass or bully could be fined (maximum £5,000) and/or imprisoned (for up to 6 months). These sanctions were considerably increased by the Protection from Harassment Act which applies to the workplace, as well as elsewhere.

5. To make a complaint of discrimination, harassment, victimisation, on unfair treatment, it will be necessary to have available:
   a) details of what, when and where the occurrence took place;
   b) any witness statements or names;
   c) names of any others who have been treated in a similar way;
   d) details of any former complaint made about the incident, date, where and to whom made; and
   e) a preference for a solution to the incident.

Until a hearing is arranged, complainants should keep the matter confidential, other possibly than arranging for details of witnesses to be given to the [company contact].

Discrimination can be alleged by a person with no direct relationship with the Organisation, for example a job applicant. Recruitment, selection and interviewing criteria must be examined to ensure fairness. All applications should be recorded, that reasons for selection (and, more importantly, rejection) are shown and that a senior person should regularly monitor records to try to ensure appointments are made on the basis of skill, experience and suitability.

Case study

An obligation not to discriminate is also owed to past employees. In *Coote v Granada Hospitality Ltd*, Ms Coote had won a discrimination case against her former employer, but when she was offered another job, was not given a reference.

She claimed that this act was also discrimination and, hearing her appeal the EAT referred the matter to the European Court of Justice. The ECJ held that member states were required under the Equal Treatment directive to provide protection in such an instance, so she won a second case.

Such a policy seeks to make it a term of employment that employees (as well as the employer) may not discriminate. As such, infringements can be dealt with under the disciplinary procedure. The Employment Appeal Tribunal has suggested that to avoid negating the preservation of anonymity during tribunal hearings regarding sexual harassment, employers should consider protecting such anonymity during internal hearings. The fact that employees can become personally liable to pay compensation should they discriminate, harass or bully, should be made clear to the workforce, as this may assist the prevention of these offences.

Liability

If the employer is found not to have complied with the equal opportunities requirements, they may become liable to pay damages (which could be substantial) to the prospective employee, employee (or former employee). It is important, therefore, that policies and procedures to avoid such breaches (including BULLYING) are promulgated and understood by all involved and policed to ensure compliance. Where an employee is found to have discriminated they could become personally liable to the person discriminated against.

Case studies

In *Enterprise Glass Co Ltd v Miles*, a male shop floor supervisor who had sexually harassed a female colleague was ordered to pay £750 to her, whilst the employer was ordered to pay her £1,000.

In *Yeboah v London Borough of Hackney*, although the employer had to pay substantial compensation to their ex-employee who had suffered racial discrimination, the manager responsible also had to pay £46,000 plus £14,000 interest (figures only slightly reduced on appeal).

In *R v Wakefield and Lancashire*, Lancashire considered himself the office jester and several times sexually touched and harassed a woman working for him. She complained to his boss – Wakefield – but he too indecently assaulted her. They were both prosecuted and given prison sentences of 12 and 21 months. The judge commented that this was a serious case of sexual bullying which was both humiliating and degrading. Lancashire was described as a cowardly bully whilst Wakefield was in a position of authority and knew of the incidents yet did nothing about them – 'women were fully entitled to be protected from such treatment'.

The sanctions can reflect the seniority of the perpetrator, the degree of intent and whether it was a one-off instance or a series of deliberate acts. The culpability of the employer will depend on the action they took to deal with the complaint and whether they applied sanctions to the perpetrator. Where there was no remedial action both employer and employee responsible could be liable to pay damages. However, where the employer has adequate rules and ensures these are policed and sanctions are applied to those who transgress, and yet harassment still takes place, it may be that the employee would be held solely responsible.

Gender reassignment

The Sex Discrimination (Gender Reassignment) Regulations 1999 came into force in England, Scotland and Wales to prohibit discrimination against persons who change their gender. In this context, discrimination occurs when a person is treated less favourably than another on grounds that he or she is to undergo, is undergoing or has undergone, gender reassignment. Compensation for claims under the regulations which amend the Sex Discrimination Act are, like claims under the Act, not subject to any maximum limits.

Under the Sex Discrimination Act employers were, and are able to, discriminate where there is a genuine occupational qualification which predetermines that only a person of a particular sex should carry out the job. A similar exception applies to the new regulations. Thus a person subject to gender reassignment could be denied working:

- with vulnerable persons with personal services promoting their welfare where the gender reassignment would (in the reasonable opinion of the employer) render such services ineffective.
- where intimate body searches are a required part of the work.
- where the person works or lives in a private home and there may be reasonable objection to the inevitable social contract.
- where there are reasonable objections on grounds of decency and privacy and the employer cannot be reasonably expected to make alterations etc.

The incidence of such reassignments, now there is protective legislation, can be expected to increase and employers need to be ready to treat the complications created by such actions with tact, consideration and creativity.

Sexual Orientation

It is unlawful to discriminate on grounds of sexual orientation. Employers (and those they employ or direct) must not:

- treat workers less favourably because they are, or are perceived to be, gay, lesbian, bisexual or heterosexual.
- subject workers to harassment (in which regard employers are responsible for the acts of their employees) because they (or someone connected with them – e.g. a son or daughter) have a sexual orientation.
- discriminate against a person after their employment has ended on such grounds (e.g. not providing a reference because a person is, for example, gay).

Employers may need to assess whether there is a genuine occupational requirement (GOR) for certain jobs (for example, in certain countries homosexuality is illegal and it would seem to be acceptable to employ only a person who is heterosexual for such work).

Religion or belief discrimination

It is unlawful to discriminate on grounds of Religion or Belief. Employers (and those they employ or direct) must not:

- treat workers differently on grounds of their religious belief unless there is a GOR for this (for example, a denominational school could insist only those following a particular religion would be employed as teachers or administrative staff. However, it might be unlikely that this could be legally applied when recruiting maintenance staff).

- discriminate or subject workers to harassment (in which regard employers are responsible for the acts of their employees) because they (or someone connected with them – e.g. a son or daughter) follow or subscribe to a particular religion.
- discriminate against a person or harass them after their employment has ended on such grounds (e.g. not providing a reference because a person is, for example, a Jew).
- apply unnecessary rules regarding dress codes which could discriminate against followers of a certain religion. There is currently only one legal exception to dress codes – Sikhs are not required to wear crash helmets since their religion requires them to wear a turban at all times.
- ensure that where there are genuine job requirements these are made clear to all applicants (for example, a need to work late regularly on a Friday could conflict with the religious requirements of those of the Muslim and Jewish faiths).

Employers need to respect the requirements of those of certain faiths, e.g. providing separate changing facilities (if changing and showering facilities are provided) for those whose religion forbids changing in the presence of others; providing meditation rooms for those whose religion requires regular prayer during the working day; ensuring canteen facilities provide a choice of food so that religious dietary requirements can be satisfied (or making facilities available so that particular foods can be prepared).

Since employers are responsible for the acts of their employees, these requirements should be brought to the attention of every person (employee and worker) in the business and it must be made clear to everyone that failure to respect a person's sexual orientation and/or religion or belief is both a breach of the business' rules (and thus subject to sanction) and a breach of legislation. With this kind of action (and the ability to show everyone was told and thus knew their obligations) subsequent claims may be avoided by the employer – although the individuals themselves might be made personally liable.

Discipline

Basis for inclusion

Legal requirement but commercial necessity

Background

Where and when employees deviate from the 'required' behaviour laid down by the employer, this must be corrected. Under the Employment Rights Act 1996, employers are required to provide their employees with details of a disciplinary procedure within 8 weeks of appointment. Many employers incorporate the procedure within the CONTRACT.

Commentary

Every disciplinary procedure has two purposes:

- **'Positive'**: attempting to display, to the 'offending' employee, the nature of their transgression, with the aim of converting that behaviour to that which is acceptable.
- **'Negative'**: this anticipates the breakdown of the relationship and seeks to provide evidence that may ultimately support a dismissal, and a successful defence of any Tribunal claim.

Procedure requirements

Disciplinary procedures should be recognisable, fair, accepted and always adhered to by those who administer them. It is management's right

to formulate and disseminate a fair policy, and to ensure, at all times, that such policy/procedure is strictly followed. It is management's responsibility to ensure everyone knows the procedure. Whereas Tribunals rarely criticise the wording of disciplinary procedures, they can be highly critical of employers which fail to abide by a procedure which they themselves have formulated. If an employee has, or is reported to have, infringed the methods or rules of work or behaviour, the problem needs to be discussed with them (to ensure the report is accurate and to discover any reasons for such action), and then (if applicable) guidance as to their correct behaviour must be provided in a constructive manner.

Most disciplinary matters can be dealt with informally at the workplace by the immediate superior – chargehand, supervisor or manager. This will comprise a few – friendly or otherwise – words putting the employer 'straight' on a transgression, or inappropriate attitude or action – in short an 'informal nudge'.

Such actions are sometimes not regarded as part of a disciplinary procedure, since this kind of informal 'nudge back into line', can be far more effective in terms of creating an awareness of the exact type of behaviour required, without the trappings of formality which may create a backlash. If, however, such informal 'nudges' need constant repeating – a note of such verbal warnings should be made in the employee's personnel file, with a copy given to the employee.

Notes: A survey carried out by Dr Derek Rollinson of employees subject to their employers' disciplinary processes at over 100 organisations disclosed that only 24% now observed the rules they had been criticised for breaking and a further 24% observed the rules 'grudgingly'. The remainder who claimed not to have changed their habits felt that their cases had been heard in a biased way. Many managers were thought to have assumed guilt before the start of the hearing and the process was only a matter of 'going through the motions'. Where employees claimed to have changed their habits as a result of the disciplinary hearing, the managers involved were stated to have taken a more 'persuasive' line 'sometimes spending more than an hour getting the employee to understand that a rule had been breached'. For more serious offences or where there has been repetition of minor transgressions (probably already the subject of informal warnings, with an indication of a sanction), there will be a need to use the formal warning procedure.

The procedure

1. INTRODUCTION

- [The company] carries out [quality work/manufactures high quality products] for its clients and customers, and expects all employees to maintain similar high standards of work and discipline.
- Our aim is to encourage and help all employees to reach the required standards.
- If, after guidance, coaching and training from a supervisor or manager, these standards are not attained and constantly maintained, or employees deviate from such standards and acceptable behaviour, it may be necessary for informal and/or formal disciplinary action to be taken.

2. STEPS IN THE PROCEDURE:

i. Verbal warning

If the matter is minor, a verbal warning can be administered by a supervisor or manager. [A note will be made of the verbal warning in an employee's file.]

ii. Written warning

For more serious offences or where there has been a repetition of minor transgressions previously the subject of verbal warnings, after investigation and a hearing, a formal written warning may be given with a copy placed in the employee's file.

iii. Final written warning

This can be used where earlier warnings have failed to achieve the required action (or inaction). Such a warning may include a time limit although some final warnings related to very serious matters may be unlimited in time. Where the result could be the issue of a warning or more serious sanction, an employee will be given written details of the alleged offence a reasonable time prior to the hearing.

3. DISMISSAL PROCEDURE

An employee's service may be terminated in any of the following circumstances. If they:

- have already received a final written warning and repeat the infringement

OR

- have been suspended and consideration of the case merits dismissal

OR

- have committed a serious/gross misconduct offence

OR

- have committed an offence which makes their continued employment impossible. Only a [director], in conjunction with the Department concerned, may authorise dismissal.

4. GENERAL RIGHTS

An employee has rights:

- to be given reasonable notice of a hearing with written details of the alleged offence
- to be accompanied by a colleague or trade union member at all disciplinary hearings and appeals
- to be heard courteously and at reasonable length on matters directly relevant to the subject matter of the hearing
- to appeal against a sanction or severity of sanction, or in the belief that the hearing was in some way flawed.

5. APPEAL

This disciplinary procedure has been designed in order to promote fairness in the treatment of employees – hence an appeals (or grievance) process forms part of the procedure. If an employee does not agree with the decision or with the severity of the sanction they have the right of appeal to [specify]. They can use the form attached to a note of the warning or other sanction. An appeal must be lodged with [name/position] within 5 working days. If any person has difficulty framing or lodging an appeal they can refer to [name/position] for assistance.

A person hearing the appeal will not have been previously involved in the matter.

6. EXAMPLES OF BREACHES

Neither of the two sets of examples below are meant to be exhaustive

i. Examples of general disciplinary offences:

- Poor timekeeping and/or attendance.
- Poor work standard or inadequate attention.
- Disruptive or unacceptable behaviour.
- Contravention of safety or hygiene regulations.
- Failure to comply with Organisation rules.

In each case a first offence can lead to a warning.

ii. Examples of serious/gross misconduct:

- Theft from the company, its employees, suppliers, clients or customers.
- Fighting on company premises.
- Damaging property of employer, colleagues, suppliers, customers etc.
- Actions on our premises or to our staff constituting a criminal offence.
- Unauthorised access to systems (including computer systems) and/or personal use of the employer's internet access and service.
- Use of prohibited substances (which include for this purpose, drugs, alcohol, solvents, etc.).
- Harassment, bullying and discrimination by any means including e-mail.
- Unauthorised receipt of gifts of a value level exceeding that set out in the ethics policy.
- Money laundering and/or failure to report suspicions of money laundering.

7. SANCTIONS

The following sanctions are available [e.g. informal warning, formal/written warning, final formal/written warning (either restricted in time or unrestricted), demotion, unpaid suspension, dismissal without notice (summary dismissal) or dismissal with notice etc.

Disciplinary interviews

The following procedure (which is based on advice set out during the *Clark v CAA* tribunal case by the Employment Appeals Tribunal – see APPEAL) should be used as a base to ensure that the process by which a hearing is conducted is fair – and seen to be fair.

1. Explain purpose of meeting.
2. Appoint person to take notes.
3. Identify those present.
4. Ensure employee has representation (if required).
5. Inform employee of allegations – although ideally these should have been advised previously. Springing allegations on an employee and expecting them to respond without notice is hardly likely to be viewed as fair.
6. Indicate and review evidence underlying allegations.
7. Allow employee and/or their representative to ask questions or to make statements.
8. Ask employee if witnesses are to be called.
9. Allow both sides to make and explain their cases.
10. Listen to arguments from both sides.
11. Consider any pleas in mitigation.
12. Consider severity of complaint and compare with length of service and previous performance of employee.
13. Request clarification of any points.
14. Invite any further statements.
15. Consider arguments.
16. Indicate in the event of the employee being found culpable, what means are available should they not agree with the finding. Any appeal to be heard will need to follow a similar procedure as is set out above.

17. Review circumstances and sanctions applied where there were any similar offences.
18. Make decision and communicate it with details of how appeal should be lodged.

Physical surroundings

A quiet room or place where the meeting will not suffer from interruptions (including phone-calls) should be used. The room should not be capable of being overlooked (e.g. because of uncurtained glass walls).

Illness during discussion

Whilst the onset of illness during a disciplinary procedure can be faked, it is unwise to make this assumption without good grounds. It will be safer to suspend action and consideration pending a return to health. Any attempted conclusion reached during such an illness might be held to have been arrived at 'under duress'. However, if there seems to be evidence of deliberate absence to thwart the holding of the hearing, it may be legitimate, after notice to this effect, to hold the hearing even though the employee is absent.

Adjournment

Legally an employee has a right (once only) to adjourn the proceedings for up to 5 days (this process could be used when there is illness).

Employee wishing to leave during process

If the hearing is taking place in the employee's working hours since employees are required to comply with management's reasonable instructions, a request to cease the process can normally be refused. However, should an employee refuse to continue and try to leave the meeting no attempt should be made to restrain him or her. It may be appropriate to suspend the employee (with pay) and request his/her attendance at another time (say the next working day) thus allowing any temper to cool.

Representation

The Employment Relations Act 1999 gave a right to be accompanied 'where [the hearing] could result in the employer administering a formal warning to a worker or taking some other action in respect of him or her'. In this regard, the letter of the law might usefully be ignored and an invite to the employee to have 'someone to accompany you' could be given on all occasions. A note evidencing this offer (and the decision) should be included in any transcript of proceedings. The Employment Relations Act also grants the right to be accompanied at a grievance hearing which 'concerns the performance of a duty by the employer to a worker' – although again it may be safer (and easier to administer) if such representation is allowed on all occasions. The right is often colloquially referred to as 'being represented' (and under any trade UNION agreement might be so granted), the legal right is to be accompanied – with some restrictions placed on the actions of the person accompanying the employee. Again, however, it may be better to ignore the legal restrictions and allow freedom of actions. Under the Employment Relations Bill 2003 the role of the person accompanying an employee at disciplinary or grievance hearings is to be clarified.

Complaint form

Where an employee is called to a hearing which might result in a formal warning or more serious sanction, the Employment Act 2002 (with effect from October 2004) requires them to be given written details of the offence a reasonable time before the hearing. A form such as the following example could be used:

To [Name]

Department _____

Details of alleged incident (time place etc) _____

_____

Note this could include:

- a reference to rule being broken
- evidence that the employee was aware of the rule
- previous warnings in relation to breaches of the rule, with dates, written notes, statements whether employee was given copies of such notes, comments made by employee etc.
- full details of the current breach – dates, documentary evidence, etc.

PROCEDURE

1. The above form outlines details of a complaint made against you. In addition, set out below are brief particulars of statements (if any) made by witnesses.
2. This information is being provided so that you may consider your position and prepare your version of the events and/or any defence to, and/or mitigation of the allegations.
3. An examination of the incident will be made on [date/time/place of hearing] by [name] who will act as hearing chairman and adjudicator. It is obviously in your interest to attend that hearing, at which you have the right to be accompanied by a representative of your choice – that is another employee or union representative.
4. At the hearing you will be able to question [the organisation's] witnesses, to call your own witnesses and to present any other data relevant to the complaint.
5. If you wish to refer to documents or written data (including statements made by your witnesses) you should bring six copies of every item so that all involved can have an individual copy. Please ask [name] to provide you with copying facilities. Similarly during the hearing, you will be given copies of every written item being referred to by the employer.

6. If you are found to be responsible for the alleged incident/complaint this could lead to the issue of a formal warning (and/or in serious cases to dismissal), so you should prepare your version of events carefully. You might also wish to identify any points in your favour or in mitigation that you think should be taken into account should the hearing chairman need to consider a penalty.

   Your version of the events and any points you wish to be considered may be entered in the section of the form provided for this purpose below. This will enable the adjudicator to review both versions of the events and prepare appropriate questions for both parties. However, there is no need for you to do this if you prefer not to disclose your version of the events until the hearing itself. In that case, simply sign and return the spare copy of this form to evidence the fact that you are aware of the hearing.

7. If there is anything you do not understand about this form please ask [nominated employee] for impartial and confidential advice, before signing and returning the copy.
8. [Specific rules regarding disciplinary hearings applicable to organisation.]
9. In the event of a penalty being imposed in respect of this alleged offence, you have the right to lodge an appeal in accordance with the guidelines set out in the Grievance procedure, a further copy of which will be provided at the time.

Please return this form by [date] _____

Signed (Manager/Supervisor) _____

Date _____

Details of witness statements/supporting evidence

_____

_____

[Employee name]: _____

YOU ARE REQUIRED TO SIGN EITHER A OR B BELOW AND TO RETURN THIS FORM TO

[NAME] _____BY [DATE]_____

A. TO [THE EMPLOYER] _____ RE INCIDENT [DETAILS]_____

I acknowledge receipt of a form of which this is a copy and will attend the disciplinary hearing on _____ [date] at _____ [time].

I have the following thins to say _____

Witness statements/supporting evidence

_____

_____

Factors to be taken into account _____

_____

Signed _____

Date _____

B. TO THE EMPLOYER

I acknowledge receipt of a form of which this is a copy and will attend the disciplinary hearing on _____ [date] at _____ [time].

I will/will not* require assistance making copies.

I will/will not* require assistance obtaining witness statement(s)

Signed _____

Date _____

* Delete as applicable

Notes:

1. This form not only sets out the complaint (which may force reconsideration of the exact offence complained of) but also the procedure so that the employee knows both what has been alleged and what (s)he has to do as a result and, perhaps more importantly, cannot claim 'I didn't know' or 'I didn't know what to do'.
2. The form should be handed to the employee personally, preferably witnessed by an independent third party, or sent by Recorded Delivery to the employee's home.
3. Requiring the case to be set out in writing particularly if the copy for the hearing chairman or adjudicator is given to them before the copy is given to the employee, allows time for second thoughts before the employer is committed to the course of action.
4. If a warning or other sanction is given as a result of the disciplinary hearing, this must state that there is a right of APPEAL.

Hearing

Regardless of the severity of the offence or potential sanction, a meeting to discuss the 'offence' must be conducted in accordance with the rules of natural justice. Hearings should be held at a mutually convenient time, in the employee's working hours and should ideally be conducted by an impartial 'adjudicator' listening to both sides of the argument, and to any witnesses, giving both parties every opportunity to ask questions of the other, and of any witnesses, and to make any points in support or rebuttal.

Once both parties have finished, the adjudicator will need to come to a decision. This does not necessarily need to be announced immediately – indeed, it may be preferable with complicated complaints to allow a time for reflection, and/or possible further independent investigation by the adjudicator. If the complaint is serious, it may be preferable to suspend the employee on full pay pending the decision, which, irrespective of the seriousness, should be made known as swiftly as possible.

Record

Full notes of the hearing should be made by an independent person with transcripts made available to both employee and supervisor/manager, and an opportunity for anyone disagreeing with the transcript to challenge, and, with the agreement of the adjudicator and the other party, to correct the record. In the event of disagreement, the adjudicator will need to decide the correct content.

Increasingly, tape recording is being used as a means of recording the proceedings. Ideally, two tape recordings should be made with the employee offered a choice of the tapes at the conclusion. This should avoid any later claim of tampering with the record.

Appeal

Since the employee may not agree with the correctness of the hearing, or with its findings, either a specially designed APPEAL procedure or the GRIEVANCE procedure can be used. This should allow recourse to independent parties for a review of the facts.

Sanctions: warnings and penalties

Assuming the case was proved, the adjudicator needs not only to record this, but also to decide on and initiate, appropriate sanctions. This will normally take the form of a written warning, usually requiring the employee to desist from unacceptable behaviour, or to comply with rules and procedures previously transgressed. Most warnings will be of the 'don't do it again' type – but should the warning emanate from a hearing held as a result of a further complaint concerning behaviour, already the subject of a complaint and warning, a second warning may be required which may (depending on the internal rules and circumstances) be regarded as a final warning. Warnings may specify a requirement of action (or inaction) within a certain time – for example, a persistent latecomer (already in receipt of a first warning, which seems to have had no effect) might be given a final warning specifying that if he is late a further twice in the next month, he will be dismissed. Any penalties specified do, however, need to be commensurate with the offence.

Time limits

Once time limits (usually six months) set out in the warning have expired, the employee can apply for the warning record – on that transgression – to be regarded as wiped 'clean'. Once a warning has expired either automatically or as a result of such an application, unless it is specified in the contract, it must be destroyed and cannot be used in any future disciplinary proceedings.

Witnesses

Where the complaint relates to discrimination or bullying it may be difficult to obtain evidence since those suffering may be wary of giving evidence fearing (unless the instigator is dismissed) that it may make the position worse. If witnesses have such a fear, it is possible to use written statements at a hearing without identifying their source(s) provided the employer has checked as far as possible that the statements are true.

Case study

In *Ramsay v Walkers Snack Foods* (a case concerning theft but the principle is the same) three employees were dismissed for theft of money from bags of crisps used for national promotion. The evidence was derived from a number of statements from other employees who wished to remain anonymous. The EAT held that the employer had acted fairly to balance the 'desirability to protect informants who are genuinely in fear' and providing a fair hearing for the accused employees.

Witnesses giving evidence (either in person or by writing) have no right to be told the decision of the hearing. If they ask they should be told 'the complaint was founded' (if it was) but the employer cannot discuss the outcome of a disciplinary hearing.

Dismissal

Basis for inclusion

Legal obligation

Background

Recruiting, familiarising, and training an employee in the principles and practices of a particular employer is costly. The dismissal of an employee means that such costs are written off – and may well be incurred again as far as any replacement employee is concerned. However, of far greater concern is that the dismissal might generate an Employment Tribunal case for unfair dismissal and potential liability of £55,000 (February 2004) plus the costs of the case.

Commentary

It should be possible, to convert the unacceptable behaviour of many employees into that which is acceptable. However, where it is not, then any decision to dismiss needs to be considered very carefully, not least since any decision found to be unfair could be very costly to the employer and will also be subject to scrutiny by remaining employees.

A decision to dismiss should therefore only be taken:

a) as a last resort;

b) after calm consideration, and reconsideration, of the events which led to the decision;

c) after checking that the whole process is in accordance with the procedure laid down;

d) after considering that the decision is a reasonable one; and

e) after taking legal advice, if in any doubt.

Legally there are five potentially fair reasons for a dismissal:

1. Conduct. The employee acts in a way that the employer feels is unacceptable or has previously stipulated is unacceptable, or does not act in the way required.
2. CAPABILITY. The employee does not attain and/or maintain the level of expertise or output reasonably expected of him/her.
3. Legal barrier. Where to continue employment would mean a breach of legislation.
4. REDUNDANCY. The job performed by the employee or the job performed by him at that location has disappeared.
5. Some other substantial reason (SOSR). This covers a number of situations, of which possibly the most numerous is that the employee is unable to continue to perform their duties because they have repetitive and/or long-term sickness, whether genuine or not.

If an employee feels he has been dismissed unfairly and he has worked for his employer for at least a full year, within 3 months of the date of dismissal he has the right to lodge a claim with an Employment TRIBUNAL. The employer must answer such a claim and if it is found that the dismissal was unfair, may have to compensate the employee or re-engage or reinstate him.

Procedure

Except where summary dismissal (see below) is warranted, most dismissals tend to follow the exhaustion of the steps in the DISCIPLINE procedure. When considering dismissal as a sanction, ideally the person required to make the decision, who should not have been previously involved,

reviews what has gone before to check the decision is fair. Asking the following questions might be appropriate:

1. Has the exact offence, already the subject of a final warning been committed? If the exact offence has not been replicated it may be unwise to move straight to dismissal.
2. Are the rules so clear that no misinterpretation is possible? If the rules are ambiguous the employer (that is the person who drafted them) cannot benefit from the ambiguity.
3. Is there a rule prohibiting the offence and, assuming there is, is it reasonable and did the employee know of it and of any changes to it? Unless it can be shown that an employee is aware of the rule (and any changes), any subsequent tribunal action may be lost.
4. Was a full and detailed complaint form given to the employee allowing them time to consider their defence? If not, this is almost certainly a breach of the Employment Act 2002.
5. Were there any extenuating circumstances? If there were, it may be unlikely that dismissal is a reasonable response and the appropriate penalty. For example, an employee with a bad time keeping record might have been given a final warning that if he was to be late in the following four weeks more than once, he would be dismissed. If he were then late twice but the first time it was because his wife had died and the second time because he broke his leg running for the bus, it would be perverse to implement dismissal. It would hardly be likely to be the action of a reasonable employer and granting a further period of probation might be more advisable. (It might also be advisable to stipulate 'late through your own fault' criteria.)
6. Has the employee admitted the offence and shown remorse? It has been deemed acceptable to apply a lesser penalty to those that have, rather than a person who despite overwhelming evidence continues to protest his innocence.
7. Is the offence of such seriousness that the warning procedure does not need to be followed? In other words, summary dismissal is reasonable in the circumstances.

Note: In the section on DISCIPLINE the draft policy includes examples of gross misconduct with the advice that one incident of transgression may be treated as resulting in dismissal. If such a policy has been brought to the attention of the employee and they transgress it will be difficult for them to prove then that dismissal is inappropriate. However, each case should be considered on its merits. Unless the transgression is so gross that summary dismissal seems to be obvious, it may be safer to suspend the employee on pay for (say) 24 hours whilst an investigation takes place and before a decision is taken. The fact that this took place, may count in the employer's favour in the event of any tribunal action.

8. Does the Organisation, having investigated the circumstances, honestly and reasonably believe the person to be guilty of the offence? This is particularly relevant to THEFT.

Case studies

In deciding employment claims, tribunals do not have to consider the criminal test of guilt – beyond reasonable doubt. Even where there is no proof of guilt an employer may be able fairly to dismiss. In *BHS v Burchell*, theft was taking place. The employer carried out a full investigation, and honestly and reasonably believed that Mrs Burchell was guilty (which later events proved she was not). Since dismissal was a fair decision in case of theft, Mrs Burchell's dismissal was found to be fair.

In *Parr v Whitbread* any one (or more) of a number of people could have stolen from their employer, who carried out a fair and thorough investigation. The employer reasonably believed that the offence could have been committed by more than one person, but the actual offenders could not be identified. The subsequent dismissal of ALL under suspicion was held to be fair.

9. Is dismissal the only or appropriate decision? The punishment must fit the crime. The degree of culpability, the seriousness of the crime, and so on can affect the assessment of what is a reasonable sanction in the circumstances.

Case study

In *Federal Express (UK) Ltd v Crank*, Mr Crank was a long service employee who took home four daffodil bulbs which he found when sweeping the floor of a warehouse. His instructions were to throw away anything swept up. His employer dismissed him but this was held to be too severe a penalty. Tribunals (who must never substitute their views for those of the employer) are required to test whether the actions are those of a reasonable employer.

10. Have all the factors relevant to the case been taken into account? If the employer has created a situation where the offence could be said to have followed as a result of that action, dismissal might be judged to be unfair.

Case study

In *Thorn Security Ltd v Agyei* a security guard was dismissed for being asleep and under the influence of alcohol. However, it was shown that the employer had required the employee to be on duty for 140 hours a week and in the two weeks prior to the dismissal to have worked 20 hours out of each 24. Since the company was prepared to use a person who by their requirements was unfit to perform the duties, dismissal was found to be unfair.

11. Is some other penalty available and applicable – for example, demotion (see below)?
12. Is the position of the employee such that behaviour possibly excusable in a more junior employee is not excusable when committed by them? An employer has the right to expect a higher degree of care and adherence to rules from a manager than shop floor personnel – not least since they must provide an example to others.
13. Has the stated procedure been followed? Failing to follow a laid down procedure can almost certainly create a procedurally unfair dismissal.
14. Is the penalty being considered fair and reasonable in all the circumstances?
15. Are there any precedents for the action and, if so, are there are variations in the facts which allow a reasonable deviation from the action if required?

Circumstances do alter cases but the details must be available to demonstrate this, should the decision be appealed on grounds of failure to follow precedent.

Demotion

Although demotion can be considered as an alternative to dismissal of a supervisor, unless it is specifically allowed for in the contract, it needs to be effected with the express agreement of the employee.

Case study

In *Morgan v West Glamorgan County Council,* the use of demotion (which only existed as an option in an unratified disciplinary code) as a sanction and thus to a reduction in earnings, led to the employer losing an action for unlawful deduction from pay.

There are three main aspects to consider – the effect on the person, their colleagues and on the person's income and other benefits. Whilst accepting the point that employers cannot assume that the loss of face would be too great for the employee to consider demotion, the practicalities of the situation would seem to indicate that, whenever possible, not only should there be a demotion but also a transfer of departments. In this way, the demotee's new colleagues will not be the same personnel he or she was formerly supervising. This may be an option only open to larger employers.

'Red circling' (or 'ring-fencing')

Perhaps the greatest problem faced by a demotee is the reduction of wage or salary or withdrawal of benefit(s) – or both. The means taken to effect the demotion may vary according to the reason for the act. If the demotion is due, for example, to ill-health or an incapacity to perform at a higher level, the Organisation may wish to minimise the financial effects. However, this consideration would probably not apply if the demotion was, for example, an alternative to dismissal for petty theft. In the former case the Organisation might wish to 'red circle' the wages. Under the 'red circling' concept, wages are not actually reduced but (when others are increased) neither are they increased. In effect, the employee's remuneration marks time until inflation – generated and other increases ultimately erode the differential. This needs to be confirmed in writing to avoid any later disagreements or questioning of the arrangement.

Withdrawal of benefits

The great problem with non-financial benefits is that once allocated they are extraordinarily difficult to withdraw. Whilst pay is to some extent hidden, company VEHICLES, use of senior staff restaurants, and similar benefits have a high profile and may be so highly regarded that their loss could be more markedly felt than a reduction in pay. Nevertheless, in the event of a demotion it would be manifestly unfair to the remainder of the staff for a person no longer entitled to such benefits to retain them. Their

loss may be cushioned by them being phased out over a short period – and, if a car is involved, the employee being given the option of purchasing it, possibly on a delayed basis. If the cash value of the car is to be recovered by deduction from wages or salary, a specific authority to carry this out will be needed, whilst the situation regarding the unrecovered part of what is in effect a LOAN, should the employee leave, needs to be addressed.

Employee agreement

Where there is no right to the employer to demote (if it is not a sanction in the employer's disciplinary procedure), simply because an employee has agreed to a demotion may not be sufficient evidence to allow the employer to reduce the wages of the employee. It would be advisable to prepare a letter for the employee to sign, which both agrees to the demotion of rank AND agrees to a new (reduced) rate of pay in respect of such demotion, with effect from a stated date (see WAGE PAYMENTS). This will avoid the employee trying to claim 'I agreed to the demotion but thought I was going to keep my pay rate' and hence being in a position to claim an unlawful deduction of wages (a breach of a statutory right).

Summary dismissal

If an employee conduct is such that it goes to the heart of the contract and effectively 'tears up the relationship', it may be acceptable to dismiss without notice. Even in the most extreme situation an employee should be given a chance to explain themselves. Thus, 'instant dismissal' should no longer be used. If the offence is such that continuation of the employer:employee relationship is impossible:

a) the employee must at least be asked for an explanation; and

b) then asked to attend a hearing at which he should have the opportunity to be accompanied.

However, rather than making an instant decision, particularly in the heat of the moment, it may be safer to suspend the employee (with pay) for 24

hours to provide time for reconsideration of the circumstances, make investigations, and take account of any background etc. Far better to spend a day's pay ensuring the correct requirements are observed, than to find that a tribunal case is lost not because the offence did not justify dismissal, but because the employer did not observe the correct procedure.

Authority

Dismissal may be the end of the matter as far as the employer is concerned, but it is far from the end as far as the effect on the employee. In view of the potential costs in terms of tribunal action, the authority to dismiss should be restricted to a fairly high level in an Organisation. In addition, someone other than the person making the decision to dismiss should review the matter, possibly using an authority form, such as that set out below, which can act as a permanent record of the check that took place.

EMPLOYER **DISMISSAL AUTHORITY**

Name _____

No _____ Dept _____

REASONS

Correct disciplinary procedure followed? YES/NO

Final warning issued on _____

Appeal procedure followed? YES/NO

Decision _____

Reason for dismissal _____

Termination set for [date] _____

Notice given [date] _____

Notice due under contract [weeks] _____

If termination date allows insufficient notice under contract terms, state reason for discrepancy, and whether employee agrees this:

_____

_____

Is dismissal for gross misconduct? YES/NO

Final payment authority completed? YES/NO

Checklist completed by Personnel Administrator _____

Contents Authorised by (level of reviewing management) _____

Dismissal on terms stated approved _____

Date _____

Notes:

1. The reason for dismissal may be required to be set out in writing. These reasons should be identified on this checklist for later reference if required. A person with a year's service has a right to be given a written reason for dismissal.
2. If the employee is not being summarily dismissed for gross misconduct, and the termination date set does not allow sufficient notice in accordance with the contract, a PAYMENT IN LIEU must be given. There may also be deductions to be made from this final payment in respect of any loans, or advances (e.g. on account of a float for expenses, Court orders, etc.) provided suitable authorities exist (see WAGE PAYMENTS).
3. In many ways, the questions asked are unimportant – what is vital is that the matter is reviewed objectively by a third party – the form is a means by which this last check is required and a possible protection against creating an unfair dismissal is realised.

WARNING: A dismissal once announced cannot be withdrawn unilaterally by the employer – the ex-employee must also agree.

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Electronic communications

Basis for inclusion

Commercial advisability and defence against harassment, bullying claims etc.

Background

The rapid development of e-mail and access to the Internet has led to problems regarding the sourcing and use of inappropriate material in the workplace. E-mail allows the instant transmission of a message by a non-typist without the previous time gap for creation which allowed for second thoughts. This can lead to an 'over casual' approach to the generation and framing of such messages. To many users an e-mail message equates to casual conversation but it is written and permanent, unlike spoken words.

The problems

1. **Sections 349 and 351 of the Companies Act 1985** require companies to state certain data (i.e. full name, registered country, number and office) on their notepaper etc. and failure to do so is punishable by fine. If a message is sent by e-mail it is considered to equate to a message sent on a letterhead (i.e. to be a business letter) and as such this required data must appear. Computer programs could be altered so that this standard information always appears.
2. **The ability to generate instant responses** rather than needing to wait for a letter to be typed leads to instances where ill-considered, overhasty and even rude messages have been generated – and later

regretted since they created confrontations which more thought and tact could have avoided.

3. It is possible for one party to **create a binding contract** where this was not intended by the other party. It may be advisable to require all external correspondence to carry a disclaimer to attempt to indemnify the sponsoring company against improper use of electronic messages, or to stipulate that a contractual relationship will only exist when confirmed in hard copy.

4. It is possible to **create libel** via e-mail which, once sent, is treated as a written document.

5. All e-mails can be reconstituted in hard copy for up to 2 years. Such messages can be made subject to **disclosure requirements** – thus, a third party with whom the company is in dispute can require details of all such messages.

6. **E-mail and intranets are used widely for the dissemination of personal material**. In addition, third parties can 'dump' unwanted messages. As a result, valuable messages may be buried in unwanted electronic communications resulting in considerable time being wasted in sorting the essential from the trivial.

7. External e-mails can contain **viruses** capable of affecting the recipient's computer systems. Suitable virus shields should be installed.

8. In a number of instances companies' **websites have been either tampered with** or copied (albeit with unauthorised additions/deletions). The format of the website should, if possible, be protected by copyright whilst employees must be advised that such actions are gross misconduct.

9. The EU carried out a survey recently and found that on average **employees use their employer's access to the Internet** for an hour each day for private purposes – often to source pornography (70% of pornography is downloaded from the Internet during office working hours). As a further development, in a number of instances such material has then been circulated via the employer's intranet leading to claims for harassment and discrimination.

10. E-mail **and intranets are increasingly being used for harassment, discrimination and bullying**, which could mean potential liability for the company and possibly its officers as well as those generating such illegal acts. A recent survey indicated that 50% of those questioned had received obscene, sexist or otherwise inappropriate e-mails within the previous year. In addition, access to the Internet enables 'electronic stalking' to take place.

Employee protection

This situation is becoming so serious that employers must consider implementing a policy/procedure, outlawing abusive practices.

Draft Electronic Transmissions policy

1. E-mail should be used primarily to distribute/update information, confirm arrangements, confirm meetings etc. [It may not be used to distribute personal information.]
2. As an exception, the system can be used to leave messages where the recipient is unavailable and the message awaits their return.
3. E-mail should not be used to substitute for face-to-face or telephone conversations since messages they convey lose much that is conveyed by body language. The medium is comparatively ineffective in this area. Research indicates that people reach the best decisions when they occupy adjacent physical space – using e-mail blanks off this advantage.
4. Unless video and audio links are available, electronic communications should not be used for meetings or managerial control. (See 3 above.)
5. Items for dissemination via e-mail should be checked after drafting for clarity, accuracy of message and absence of abusive, emotive, etc. words. The language used must be consistent with conventional standards, decency and respect for others, and good manners.

6. Commenting on or about another person or body should be avoided but, if it is unavoidable (i.e. it is a necessary part of the information under consideration), should only be based on and backed up by facts (failure to have available a factual basis for such items could lead to a libel action)

7. On no account should the internal or external system be used for vindictive, harassing, discriminatory or abusive comment or criticism of anyone, whether this is the target, another employee or any third party. Further, it must not be used for electronic stalking.

8. A person receiving an item which they feel should have been prohibited by items 5 or 7 above should notify [name].

9. Any person proved to have deliberately sent an item prohibited by item 5 or 7 above and/or item 14 below may be deemed guilty of gross misconduct and can be dealt with under the disciplinary procedure accordingly. Some of these offences also breach criminal law and can be made subject to sanctions including imprisonment.

10. All messages etc., should be clear and unambiguous and coded from 5 star to 0 star in order of priority (in accordance with the priorities of the recipient rather than those of the sender). Since clarity is preferable to brevity jargon should be avoided unless the sender is absolutely certain that the recipients will understand it.

11. An e-mail message should be treated as if it were a hard copy letter and drafted and checked in the same way. In law, an e-mail message has the same value as a hard copy letter. All e-mails can be re-captured in hard copy.

12. No e-mail message or response to an e-mail message should ever be sent in haste, anger or hostility. Ideally, a time for consideration should elapse between drafting and sending a reply.

13. No e-mail or other communication containing a virus or equivalent damaging content, may be sent internally or externally. No electronic device capable of receiving e-mails or other communication from external sources, may be used without being virus protected.

14. Access to the Internet is for the purposes of the employer's business only and such access must not be used for an individual's requirements whether personal or on behalf of another. Failure to comply with this will be regarded as gross misconduct.

    [Alternatively: Access to the Internet for personal purposes is permitted only (for example, i.e. outside working hours) before 8.30 a.m. and after 5.30 p.m. On no account must any data or information so derived be used in or passed round the Organisation in any way whatsoever without the written permission of [name].]

15. All communications including e-mail, faxes, telephone conversations etc. generated and/or received by employees may be monitored by the company as is allowed under the contract of employment. Where private business is to be transacted employees can use the payphones provided. These phones are not monitored.

16. Personal mobile phones may not be used at the workplace and must be switched off during working hours. They can be switched on and used during recognised breaks provided this can be effected without causing any dislocation to the computers and other property and procedures of the company. If incoming urgent messages are required to be made other than at times of breaks, these should be left with the switchboard operator who will pass messages to employees. Where the matter is urgent an employee may use their own phone or a payphone to return the call, subject to gaining permission from their supervisor or manager to leave their place of work.

17. On no account may any Organisation information, stored in any electronic data or other system (including purely for example, computer aided design work), be copied or removed (including by electronic transfer) from the premises of the Organisation without prior written permission of [name].
18. The company websites are the sole property of the company and any unauthorised interference with, or copying and variation of such websites is not only gross misconduct but also can generate an action for damages.
19. On no account must an employee in receipt of a personal incoming e-mail distribute such material internally or externally without specific prior permission from (designated person).
20. For security reasons and to prevent fraud, covert monitoring may take place both on an off company premises.
21. Persons undertaking job-sharing will be allowed access to their partners electronic and other transmissions
22. If using the 'out of office' facility no personal details (address, phone number, date of return) should be stated to prevent hackers obtaining such information from this source.
23. Before using the system employees will be required to type 'YES' in answer to a screen prompt 'Are you aware of the [organisation] Electronic Transmissions policy and that breach of the requirements is gross misconduct' before they can proceed.
24. Breach of this policy is gross misconduct.

Notes:

1. Advising users that e-mails can be recovered in hard copy form for up to two years and can be made subject to legal disclosure rules, may encourage users to think more carefully of their message content.
2. There is evidence that hackers finding a message referred to in Clause 22 and knowing the employee is away for some time, find their private address and then burgle the employee's house.
3. If the employer wishes to be able to monitor all messages (e.g. telephonic, electronic and hard copy) a suitable clause must be inserted in the Contract of Employment, so that the employee effectively 'grants permission' for such monitoring.

Example of eavesdropping clause

1. The employer provides electronic transmission systems for the purposes of its business during normal working hours only. Employees will be expected to operate such systems from time to time and it is a basic rule that in working hours such access must be only for the employer's business purposes.
2. Monitoring devices are installed and e-mails, as well as faxes, letters and telephone calls may be checked to ensure that only the employer's business is being transacted and that this is being conducted in an acceptable way using reasonable language, etc. A pay phone is provided as [specify] and communications via this phone are not monitored.
3. It is a contractual requirement that employees agree to such monitoring. As a concession (which the employer reserves the right to withdraw at any time and without notice) employees will be allowed access to the Internet for personal purposes outside normal working hours, providing this is at no expense to the employer,

that no embarrassment or damage would be caused to the employer should details of the material accessed be widely known, and that no material thereby derived is disseminated internally, or to any shareholder, customer, agent or supplier in any way whatsoever without prior written approval from [name].

Implementation of clause

Many would regard taking the right to eavesdrop as a material change to the contract. In order to make it effective, ideally full consultation and communication should take place, explaining all the problems and that its purpose is to protect the employees and the employer (since if unsuitable material is passed to an employee who has no wish to see such material they could sue the employer for failing to provide them with a 'safe place of work'). If this is impossible the clause could be brought into being by the employer:

a) providing the maximum notice to bring the contract to an end (e.g. 12 weeks statutory notice unless the contract provides more notice.)

b) stipulating that a new contract with the clause inserted applies from the end of the notice period.

c) confirming that all rights and service etc under the previous contract apply to the new and that there is continuous employment.

d) stating that if the employee works after the termination date they will be deemed to have accepted the new contract (i.e. the 'old' contract with the addition of the eavesdropping clause).

Emergency leave

Basis for inclusion

Legal right

Background

Employees are legally entitled to take a 'reasonable' amount of unpaid leave to deal with 'family emergencies' (regardless of their length of service).

Commentary

Such leave is aimed to cover the following purposes:

a) To help when a dependent is ill, gives birth, or is injured or assaulted.

b) To arrange for an ill or injured dependent to be cared for.

c) Because a dependents care arrangements are unexpectedly changed.

d) As a result of the death of a dependent.

e) To deal with an incident involving a child which occurs unexpectedly in school time.

'Dependent' is defined as a spouse or cohabitee, child, parent and for the purposes of a) – c) above anyone who relies on the employee for help or to make arrangements.

Records 'need not be kept' but most employers will wish to keep a record if only to be able to judge whether the requests (taken over a period) are

reasonable. Until there are Tribunal decisions on this it is difficult to assess what is 'reasonable'. However, when granting public leave (e.g. to serve on a tribunal, as Justice of the Peace, etc.) an annual figure of around 10 days (or less in certain cases) is often decided and this may be a guide.

Case studies

In *Qua v John Ford Morrison Solicitors*, Ms Qua took emergency leave to care for her young son. After the initial leave she took a number of repeated days off to care for what her doctor diagnosed as a continuing illness. Since the child's illness was 'continuing' the employer's view was that it could not be classified (and thus taken) as 'emergency leave'. Ultimately they dismissed her for taking too much time off (not all of which was related to her son's condition and not all of which dates they alleged were explained by Ms Qua). The EAT (which referred the case back to a differently constituted tribunal) stated in its decision:

'Whilst we recognise that no limit has been set on the number of times when an employee can exercise this right, an employee.is not entitled to unlimited amounts of time off work.even if in each case s/he complies with notice requirements. The legislation contemplates a reasonable period of time off to enable an employee to deal with a child who has fallen ill unexpectedly. Once it is known that the particular child is suffering from an underlying medical condition which is likely to cause him to suffer regular relapses, such a situation no longer falls within the scope (of this leave). The right is essentially a right to time off to deal with the unexpected.'

Julie Kitson who had worked for a firm of chartered surveyors for a short time, was dismissed when she stated to her employer that she would have to leave work to care for her young son who had been injured in an accident at school. This was a breach of a statutory right and thus she could bring a tribunal claim, regardless that her length of service was less than a year.

Employee rights

Basis for inclusion

A guide to most employee rights

A) Safety rights

An employee is entitled:

- to a workplace that is both physically safe and with protection against discrimination, harassment, bullying etc.;
- to be medically suspended on pay (for a maximum of 26 weeks – and not to be unfairly dismissed in this period) for a condition specified in ERA section (64)(3);
- to be suspended on pay if, when pregnant, the normal place of work poses a risk to her and/or her unborn child, and no suitable alternative work can be found;
- not to be forced to work more than 48 hours a week (averaged over a 17 week period); a right that can be waived by an employee by signing an individual 'opt out'; and
- to be consulted regarding matters affecting their safety.

B) Contract rights

An employee is entitled to:

- a statement of terms of employment within 8 weeks of joining;
- an itemised pay statement;

- one week's notice of termination of contract for every year's service up to a maximum of 12 weeks (unless the contract grants greater rights);
- be paid at least the NATIONAL MINIMUM WAGE for every hour engaged in the employer's business;
- pay for hours spent on stand by (even if asleep) at the place of employment;
- consultation regarding the change of a material contract term (if there is failure to consult, this may create a breach of contract claim, although with notice an employer should be able to vary such terms even if an employee objects); and
- wages without any deduction except Statutory Payments, Court and/or CSA orders and any items which the employee has Authorised prior to the deduction being effected (see WAGE PAYMENTS).

C) Sickness rights

An employee must be paid:

- Statutory SICKNESS Pay (SSP) when sick and covered by a self-certificate or Doctor's certificate, for 28 weeks in each year; and
- during a period of notice (even if they are unable to work – e.g. because of sickness).

D) Union rights

Employees have rights to:

- join or not to join a recognised trade union;
- be told (once the WORKS COUNCIL regulations are in force) of the right to request such a Council be set up, vote on the proposal, and, (if at least 10% of employees want such a council) vote on membership and representation, and have matters raised therein considered by the employer;

- reasonable amounts of paid time off to carry out duties as an elected member for the purpose of consultation, re Trade Union activities, safety matters, pension trusteeship, redundancy, TUPE, works council member; and
- a reasonable amount of paid time off if nominated as a Union Learning Representative.

E) Redundancy and TUPE transfer rights

Employees are entitled to:

- reasonable amounts of paid time off to look for and train for alternative work if made redundant;
- be paid Guarantee Payments (see REDUNDANCY) if laid off due to a lack of work;
- be consulted (both by their elected representatives and individually) regarding the possibility of being made redundant and the process by which employees will be selected for redundancy;
- be consulted regarding any transfer under the TUPE regulations; and
- (if transferred under the TUPE regulations) retain their current contract terms and not to have these altered by virtue of the transfer.

F) Family friendly rights

Subject to service and pay levels, employee parents are entitled to:

- ante-natal, maternity, paternity, parental, adoption and family emergency leave (with payment if eligible);
- a reasonable amount of paid study leave (eligible 16-18 years old only);
- take and be paid for 4 weeks holiday within the employer's holiday year if they request it;

- ask for flexible working arrangements and to have such a request considered objectively within a set timescale; and
- be accompanied by a workplace colleague at a meeting to discuss a flexible hours request.

G) Human rights

Employees are entitled to:

- be given notice if the employer wishes to eavesdrop on private communications during working hours and at the workplace;
- a reasonable number of private phone-calls whilst at work;
- a reasonable time off (without pay) for public duties (as a member of a Tribunal, Statutory board, Governor of a State school, Local Councillor, Justice of the Peace, as a jury member, etc.);
- protection from discrimination, harassment, bullying or any other anti-social behaviour (on grounds of race, sex, disability, sexual orientation, religion or religious belief, age);
- the protection of their personal information held by the employer and the disclosure of such information only on a 'need to know' basis; and
- have any reference of which they are the subject prepared with care and accuracy (although the employer is under no obligation to provide a reference).

H) Pension rights

Employees have rights:

- subject to employee numbers/earnings, to join an occupational or stakeholder pension scheme; and
- if a member of an occupational pension fund or scheme to a range of information concerning contributions and benefits.

I) Disciplinary and dismissal rights

Employees have the right to:

- reasonable notice and written details of the alleged offence if called to a disciplinary hearing at which a formal warning or more serious penalty might be given;
- access to an ET if the above requirement is breached regardless of service;
- be accompanied at a disciplinary and grievance hearing by a colleague or official of a trade union (not necessarily one recognised by the employer);
- have such a hearing adjourned once for a maximum of 5 days;
- (subject to the employee having completed a year's service) access to an ET if they feel they have been unfairly dismissed and to be given a written reason for such dismissal; and
- access to an ET for breach of a statutory right (regardless of service).

K) Training rights

- 16-18 year old employees who have not attained academic or vocational standards at school and who wish to try and attain those standards by following a recognised course of study must be given reasonable amounts of paid time off to attend such courses.

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Ethics

Basis for inclusion

Legal obligations, re avoiding bribery etc.

Background

Many organisations now adopt corporate aims and require employees to adhere to policies, procedure and attitudes in accordance with such aims. Aims set the pattern for corporate behaviour and indeed, the behaviour of employees in their dealings with each other, their suppliers, their customers and the communities of which, inevitably, they are part.

Commentary

More recently, statements such as those referred to above have been extended to cover the whole gamut of behaviour and may be more properly described as Statements of Corporate Ethics. Such codes seek to encapsulate a criteria demonstrating both to those who work within the Organisation as well as to those to whom it relates, the manner in which it expects to do business and the way in which it expects its staff to act – a reflection of the organisation 'moral tone' or ethos.

Draft Code of Ethics

1. The Organisation operates under high quality standards – both of products and of service, and requires these to be adhered to at all times in all its dealings.

2. No-one working for, or employed by or providing services for, the [Organisation] is to make, or encourage another to make, any personal gain out of its activities in any way whatsoever. Any person becoming aware of a personal gain being made in defiance of this policy is required to notify [name]. Provided there are reasonable grounds for such suspicion, the position and identity of the person reporting the matter will be protected. Anyone placed in a position where they feel that they could make a personal gain should notify [name].

3. Other than properly authorised trade and retail promotions, no inducement may be given to any customer or outlet to encourage them to place an order for, or take any product or service offered by, the Organisation.

4. Customers may be entertained whilst discussing terms at places and to the limits laid down in the entertainment and gifts guide (see below). The limits and guidelines included in that guide must not be broken.

5. If a person considers he/she needs to entertain a customer and that the limits are inappropriate (for example, should the event be related to the smoothing over or rectification of a serious problem connected with supply, quality etc.,) the written authority of [a Board member] should be obtained and referred to in the subsequent expense claim.

6. Employees are allowed to accept hospitality from major customers and suppliers in terms of lunches OR other similar value entertainment, to a maximum of [three or four such items] a year. In the event that the value obtained is in excess of that laid down in the [company] entertainment guide, this fact must be made known to a [Board member] immediately. If the entertainment provided is considered to be in excess of that warranted by the circumstances, the director responsible may need to contact the third party to explain the [company's] policy on accepting entertainment.

7. Other than at Christmas, employees are not allowed to accept or retain gifts made by any customer or supplier or other third party, generated because of the business relationship. In the event that

such gifts are delivered and it seems potentially offensive to return them, then, subject to the approval of the [Director] the gifts may be retained by the [company] and used as raffle prizes or donated to charity. In this instance the [Director] will contact the sender, thank him/her for the gift, and explain what has happened to it and the reason for this (that is, the [company] policy).

8. At Christmas, employees are allowed to accept normal gifts to a maximum value of [sum] per sender's Organisation. If gifts above this level are received then, subject to the approval of the [Director], they may be retained on the basis as set out in 7 above.

9. If multiple gifts are received from a supplier or customer to mark the good service he/she has received from a number of employees, these may be retained provided the value per employee sharing in the gift does not exceed the guidance laid down in the entertainment policy.

10. The attention of all employees is drawn to the danger of a customer or third party using the gifts as a bribe, exerting pressure to obtain better terms, or using the threat of, or actual publicity concerning the acceptance of, a gift as pressure to obtain better terms or other advantage. In all circumstances the immediate response should be 'I cannot comment further – I must contact [the director] to discuss this matter'.

11. Any suggestion of using facilities owned, occupied or available to the third party (for example, a holiday villa, concessionary or free travel, etc.) either on a free basis or for any consideration which seems or is less than the market price, should be communicated to the [director].

12. The Organisation wishes to comply with all laws, regulations and codes of practice etc. wherever it trades. It seeks to trade legally, fairly and honestly with all third parties and to give value for money in all its dealings. It requires and expects its employees to carry out their work and responsibilities and to conduct their relationships and dealings with third parties in accordance with these precepts. All dealings must be conducted openly and fairly and in such a way that should every aspect of the transaction become widely

known (for example, in the national media) this would not cause injury or damage to the reputation of the [company].

13. All employees, at whatever level, are encouraged to report any activities which seem to be a breach of this policy. Such reports will be treated as confidential and provided they are made in good faith and not for personal gain, persons making the reports should not fear any reprisals or detriment. (See WHISTLEBLOWING.)
14. All employees are required to act responsibly, decently and with regard for the dignity and rights of others in both business and personal dealings. In many instances personnel (particularly senior personnel) will be seen as acting on behalf of, or by virtue of their position in the Organisation, the reputation of which must be protected at all times.

Gift policy

Where such a comprehensive policy is deemed unnecessary (or where there is a need to give addition or specific advice regarding accepting gifts and/or hospitality) a policy such as the following may be appropriate.

1. The [company] operates under known and advertised terms of business and, unless there are specific reasons and the negotiation has board approval, will not alter such terms.
2. The [company] insists that at all times the highest standards of service are given to every customer and supplier. It expects similar treatment from its suppliers. Accordingly, there should be no need for any marks of appreciation to be either given or received regardless of whether such appreciation is made in money, kind or other items of value.
3. Without exception, gifts of money may not be either given or received and in such event, any employee found culpable of either giving or receiving cash will be regarded as in breach of the [company's] rules in a matter of gross misconduct, and dealt with accordingly. Gross misconduct generally leads to dismissal.

4. Any gifts of appreciable value offered or received, should either be politely but firmly declined when offered, or if this is not possible (that is they are delivered by a courier or equivalent), then returned with a note indicating that it is against company policy for individuals to receive gifts. Appreciable value will be determined annually but currently it is [sum]. Every instance of a gift being declined or returned must be notified to [name].

5. On occasion, to decline or return a gift could cause offence – particularly with foreign [customers]. If this is felt to be the case, then, with the approval of [senior management name] the gift may be retained by the [company] and disposed of as decided by [name]. This may mean allowing the original recipient to retain the item or requiring it to be otherwise disposed of.

6. Whilst [the company] accepts that from time to time it may be conducive to business relationships to accept hospitality from, or provide it for, third parties, this must be confined to a normal business breakfast, lunch or dinner. In the event that entertaining in excess of this guideline is offered or received, this should always be regarded as exceptional and separate notification of each instance is required to be made to [name].

   Advance approval from [name] must also be sought should it be considered appropriate to offer such entertainment. Again, any breach of this guideline will be regarded as gross misconduct.

Bribery

Under the Anti-Terrorism, Crime & Security Act 2001 any bribery or corruption conducted by UK companies overseas are subject to the same restrictions and penalties that would be applied if such acts were committed in the UK, and UK directors could be held liable for such acts. This would even apply to minor inducements (for example, to facilitate the swift issue of a visa) although the Government has stated that it does not intend to prosecute in such cases.

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Expenses

Basis for inclusion

Commercial expedience

Background

Where an employee is required to spend their own money for their employer's purposes there must be a clear procedure by which they know what amounts they are permitted to spend, how they claim reimbursement and how they are required to substantiate such claims.

Commentary

The absence of rules or guidelines can lead to a situation which can be exploited by the criminal and misunderstood by others – both events tending to lead to loss borne by the employer.

Case study

In *Pilkington v Morrey and Williams,* the employer regularly made payments in respect of overnight accommodation expenses when they knew the employees claiming had not stayed away from home and thus, had not incurred the expense. When they dismissed two employees for claiming in respect of similar 'non-incurred expenses', the dismissals were found to be unfair. The employees statement 'that they were confused as to the situation' was accepted as a defence for them then claiming for the 'expenses'.

Strictly policed rules and procedures can avoid this kind of problem. If a rule has fallen into disrepute, such as happened in the Pilkington case, this does not stop the employer reinventing it. For example, it could have advised everyone affected giving, say, four weeks notice and confirming that after that date the rule would be strictly enforced and (in that example) only when overnight expenses had been incurred would the allowance be paid.

Procedure

Where a variety of employees are able to incur expense on behalf of the employer there needs to be a guide to the amount of expenditure which may be incurred at each level. This helps avoid misunderstandings.

Draft expenses guidance

A. Directors

You are authorised to incur expenditure in the following ways:

1. For all expenses incidental to operating the allocated company car (except that servicing is to be booked through Transport Dept with nominated suppliers) including emergency repairs to a maximum of £500. All fuel costs will be met provided VAT invoices (in the name of the Organisation) are submitted.
2. Entertaining costs to a maximum of £75 per event. Unless involved in the negotiations or directly with the guest, other employees may not be entertained without the permission of [the Chairman].
3. Travelling on company business. The company will reimburse employees travelling at the following rates:
    a) breakfast (when leaving home before 6.30 or staying away from home overnight) up to £10.
    b) lunch (when unable to visit the staff restaurant) up to £10.

c) dinner (when travelling later than 8.00 p.m. or staying away from home) up to £15.

In each case if you wish to spend more you must contribute the difference.

4. Flying. Tickets will normally be purchased on your behalf by [name] through the company account. You are entitled to travel [first/executive/club, etc. class].

5. Hotel accommodation. Hotels will normally be booked in advance by [name]. The accommodation will usually be in a 4 star hotel, the account for which will be sent direct to the company.

6. Overnight allowance. For every night for which you need to stay away from home on company business you may claim an allowance of £10.

7. You have been allocated a company credit card which should be used wherever possible to pay for expenditure, such as the above, incurred on the company's behalf. This card may be used for your own personal expenditure to a maximum of [sum] provided that it is reimbursed by you immediately the account is received.

WARNING: Directors of limited companies using a company credit card in this way should be aware of the restrictions under company law in respect of what are called 'quasi loans'. The maximum amount which can be outstanding is £5,000 which can only subsist for a maximum of 2 months.

B. Managers

[Similar guidance with appropriate expenditure levels.]

C. Other staff

[Similar guidance with appropriate expenditure levels.]

D. General

All expenses must be reclaimed monthly on an Expenses Form which must be authorised by the level above the claimant. Each item must be supported by a receipt, with VATable items supported by a VAT receipt.

If a VAT receipt is not provided for an amount including VAT the company reserves the right to refund only the net amount as it may be unable to recover VAT without such a receipt.

Cash floats

Since they may incur considerable amounts of expenditure on behalf of the company many senior and/or field staff may be given a cash float or advance by the company. The submission of the monthly expenses claim form then acts as a request to reimburse the company's advance – that is an imprest system. It should be made very clear that despite having an advance or float, all expenditure must still be accounted for as above, and a note of the fact should be inserted in the employee's file. This should then act as a reminder to collect the float if and when the employee leaves.

Fraudulent claims

Unfortunately, over claiming or 'padding' expenses tends to be widespread. Making it clear that all expense claims are checked carefully may restrict the more blatant claims. Such checking should not overlook analysis of fuel receipts against the miles travelled – as well as the 'logic' of the amount of fuel purchases (that is comparing the achieved mpg against the manufacturer's figures – or performance of similar models in the fleet).

Example of Vehicle Expense Form

VEHICLE EXPENSE FORM

Month ending _____ Driver _____

Vehicle _____ Reg. No. _____

Date	Details of trips	Mileage	Petrol Expense	Other	Total	VAT
1						
2						
3						
4						
5						
6						
7						
and so on for each day of the month						
24						
25						
26						
27						
28						
29						
30						
31						

TOTAL business miles _____ TOTAL private miles _____

Mileometer reading now _____ Mileometer previous Car Report _____

Next service due miles _____ Last service [mileage/date] _____

I confirm that the expenses detailed above were wholly and exclusively incurred in the interests of the company and I claim repayment of £ _____

I inspected (and replenished, if necessary) the air pressure in tyres, water (engine and battery) and oil on _____ [date]

Signed _____ Date _____

It is not unknown for drivers to ask for additional receipts at service stations, filling the spares in themselves, or refuelling a second family car at the same station and submitting receipts for both transactions. Checking the serial numbers of such receipts as well as the dates and comparing the litres of fuel purchased with the mileage may highlight such theft. Insisting on the use of an expense form (such as that set out above) which requires drivers to make brief notes of every journey on each day can help control any excesses as well as providing mileage statistics that may be required for tax purposes. If the employer has evidence of over claiming or dishonesty, specific advice should be obtained concerning actions both to dismiss the employee and to recover the amounts stolen. It may be possible to recover the sums involved from amounts due to the employee although (in view of the restrictions on making deductions from pay – see WAGE PAYMENTS) such action needs to be embarked upon with some caution.

Case study

In *SIP (Industrial Products) Ltd v Swinn,* the employee dishonestly obtained over £2,000 by altering fuel receipts to inflate his expenses, a charge to which he subsequently pleaded guilty in a magistrates court. When he was dismissed, he was owed £457 in unpaid wages and holiday pay which the company withheld to offset its' losses. The EAT held that Tribunals have no jurisdiction to consider whether an employer has a general right to seek reimbursement of such an overpayment and allowed the employer's appeal against a Tribunal decision that the money due in respect of the wages, etc., should be paid.

Taxation

Some claims for reimbursement may be subject to the deduction of tax. For example, travelling expenses incurred by employees on after hours 'call out' needing to return to their place of work can be reimbursed but are regarded as income by the Inland Revenue. Accordingly, in reimbursing such expenditure an employer is required to pass the amount through the payroll so that it suffers tax, or to deduct tax on payment.

The Inland Revenue allow (tax free) an allowance for incidental expenses of up to £5 per night (£10 per night overseas) for those travelling on employer's business. If more than this sum is paid, tax becomes due on the whole sum, not the excess over the allowance.

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Familiarisation

Basis for inclusion

Commercial advisability

Background

Familiarisation (a more holistic process than induction) should be a structured process by which newcomers are assimilated into the new employer and supported whilst they 'find their feet' and become effective members of the team.

Commentary

American management guru Professor Chris Argyris says 'I ask managers how long it would take them to learn to play a moderate game of tennis. They say 'oh about two years'. Well then, how come they don't have that sort of commitment to developing people's learning?'. At no time in an employee's career than when they first join is there a greater need for a structured process of Familiarisation – introduction to both the Organisation and their own new responsibilities. Few of us can retain perfectly what we are told first time – repetition is essential. A Familiarisation process is a combination of user-friendly documentation (backing up verbal briefings) and genuine, ongoing interest and support from both departmental and personnel functions. Recruitment is expensive, whilst labour losses tend to be highest in the first year of employment. Recently, retailer W H Smith estimated that it cost over £3,000 to recruit and train a shop assistant, whilst LloydsTSB estimated the cost of recruiting and training a junior clerk at £10,000.

A considerable number of new employees leave their employers within a short time of arriving. A survey by www.totaljobs.com indicated that:

- 10% of starters leave after a single days work;
- a further 14% leave within the first week; and
- a further 17% do not last till the end of the first month.

If 40% of recruits are unlikely to stay for more than 4 weeks either the recruitment was poor or, more likely, insufficient efforts were made to establish such newcomers and to make them feel at home.

Advisability

70% of employees rate their first day of work at a new employer as the most stressful experience of their adult lives. Sadly it must be said that the first impression ('you never get a second chance to make a first impression') gained by an employee is often that the employer is unprepared for the arrival of their new recruit – and may even resent the challenge of the extra work it entails. Induction may then be restricted to a few hurried messages in a snatched 30 minutes. This is hardly an auspicious start – and not one that will give a positive message to the newcomer.

With such a 'welcome' it is hardly surprising that 40% of employees are stated not to stay more than a month. If they leave of course, the whole costly recruitment process must be repeated.

The process is exacerbated by problems which are often overlooked by the employer:

a) Not everyone can explain things simply – particularly if they only rarely have to rise to this challenge – and may become impatient with a person vainly trying to understand something imperfectly demonstrated.

b) The accretion of knowledge is rather like a bricklayer building a wall. Each brick contains knowledge and the memory of the established employee can take each item on board since each chunk

is digestible and relatively easy to retain. However, a newcomer needing to 'learn the whole wall' has a daunting task and one that cannot be accomplished swiftly.

c) A newcomer is conditioned by the experience to demonstrate willingness and concentration. To check understanding the supervisor will often say 'is that clear' – 'oh yes' comes the automatic reply, or 'do you understand that' to which the conditioned answer is 'of course'. Nine times out of ten the newcomer has only partial understanding but few are brave enough to say so!

d) Few of us can understand complex items the first time they are explained, we need the messages to be repeated and reinforced – even if the utmost clarity is achieved (and that is perhaps rare).

Watching the Ps and Qs

All newcomers need to find out about the products, prices, procedures and people. In doing so repetition is essential since, almost certainly, even if the process is structured too much information will be loaded on the newcomer's memory. Inevitably such a mass of information – even if spread so that it is presented in digestible and memorable 'chunks' will generate question after question in the mind, even if not uttered, of the newcomer. An easy way of appreciating this could be to visualise the newcomer and the teacher on either side of a tennis net:

Teacher –	Products:	Newcomer –	Question
	Prices:		Question
	Procedures:		Question
	People:		Question

with the slogan – watch the Ps and Qs.

Using another simile, few gardeners would visit their local nursery, select and pay for a plant, put it in the ground and then walk away and leave it to flourish or die. Most will carefully tend for their investment, watering

and nourishing it to encourage it to become established. Is this not the way employers should treat new employees – who after all will cost a great deal more than a plant?

Structuring the process

Familiarisation may thus be best divided into three main areas of time:

1. An introduction period covering the time from the conclusion of the final interview, the period of offer and acceptance, and up to and including arrival. Whilst care must be taken not to overload the appointee, if information can be given to them prior to the start date the process of assimilation can start that much earlier.
2. An induction period covering the time from arrival to, say, the end of the second month of employment, when a great deal of information must be absorbed so that the recruit can actually begin to work and to work effectively.
3. An instruction period covering the time from, say, the beginning of the third month to the end of the first year of employment. The aim during this time is to enable the new employee to become completely at ease in their environment, increasingly productive and to lead up to their first appraisal which may identify further training needs.

During each of these periods various items should be explained and the recruit's comprehension checked. To ensure a reasonable degree of comprehension certain items can be duplicated at the second and third stages as shown.

DRAFT FAMILIARISATION CHECKLIST

RECRUIT'S NAME	INTRODUCTION	INDUCTION	INSTRUCTION
Offer letter/confirmation	/		
Draft contract sent	/		
Handbook/rules/information	/	(knowledge)	
Reception – time	/		
– place	/		
– P45/P46	/		
– C383	/		
– P38(S)	/		
– Disabled person	/		
– Engagement form	/	/	
Access/clock card	/		
Toilets	/	/	
Changing rooms	/	/	
Locker key	/		
Car park pass	/		
Telephone	/		
Discount card	/		
Confidentiality undertaking	/	/	
Sickness administration	/	/	/
Fire Alarm	/	/	/
Safety matters	/	/	/
Wage advance	/		
Department introduction	/		
Local facilities (vending, toilets, etc.)	/		
Person introduction	/		
Job introduction	/	/	
Timekeeping and breaks	/		
Organisation rules	/	/	/

Departmental rules	/	/	
Tour local departments	/		
Payslip	/		
Organisation chart	/	/	
Relationship chart	/	/	
Discipline	/	/	
Grievance	/	/	
Training	/	/	
Inter-related depts introduction	/		
Induction course	/		
Tour of premises	/		
Questions	/	/	/

Notes:

1. The mentor (that is an established employee who is always available to the newcomer for advice, suggestions, etc. – see below) or supervisor/manager needs to cross tick to show that the item has been covered with the recruit. If / appears in two columns, then the person responsible for the subsequent part of the process is expected to check knowledge.
2. Once completed, the checklist is returned to [personnel administration] who should spot check that the items required have actually been discussed with employees.
3. Requiring a structured approach to all items required to be communicated to, and understood by, a newcomer, not only helps ensure that nothing is missed, but also provides an opportunity to promote dialogue with the newcomer which can be used to check knowledge, attitude and approach. In short it can start the communication process that is a valuable part of the process by which employee commitment and motivation is engendered.

Induction course

Recruits should also be required to attend an induction course. This gives the employer an opportunity to address all newcomers, newcomers to hear questions from those facing similar challenges and problems to their own, and an opportunity to generate an informal dialogue. If difficulty is experienced in encouraging newcomers to speak up as some may be somewhat timid even after a few weeks service, inviting some 'old hands' to attend may assist, particularly if they were not given the benefit of such Familiarisation when they joined.

Mentoring

As an additional method of making it easy for a recruit to learn all about the Organisation and to be assimilated by it, and to ensure that the possibility of disciplinary encounters is minimised, mentors may be used. The concept of a mentor is somewhat akin to an 'eminence gris' – a powerful guiding force in the background, although it has also been described as a 'mother hen' process, and perhaps the true description lies somewhere between the two. The need is for someone to watch over the recruit, to be on hand to answer their questions or concerns and to guide them with both information and advice on the way 'things are done around here' on an informal assistance basis.

It is worth noting that the National Health Service has been studying an American Health Organisation's year-long induction programme with a view to using the concept to help cut their labour turnover which can be as high as 25% in some areas. The VHA (a national co-operative of American healthcare organisations) has piloted the year-long concept and claim it has reduced labour turnover by between 6 and 10%. The programme is called 'employee on-boarding' and aims to create a bond between newcomers and their new employers through a series of activities such as 'lunch-buddies' and monthly satisfaction interviews.

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Fighting

Basis for inclusion

Commercially advisable

Potential legal liability

Background

The average workforce mirrors society. As society becomes more assertive, aggressive and argumentative, employers may experience similar trends within the workplace. There is a legal obligation to provide a workplace that is safe for all who work and visit it, under the Health & Safety at Work Act 1974. Apart from the natural wish to avoid injury and the loss of time and waste involved in disputes and fighting, aggravation of all descriptions must be outlawed.

Commentary

Employees need to work together in order to achieve output and maximise productivity. Thus, not only should rules outlaw fighting, but also it should be stated that if it occurs, the strictest sanctions will be applied. In fact, many employers stipulate that fighting is gross or serious misconduct and those involved may be dismissed. This general trend tends to be accepted by tribunals, although circumstances do alter cases.

Case study

In *C A Parsons & Co Ltd v McLoughlin*, the Employment Appeal Tribunal commented that 'in these days it ought not to be necessary for anybody, to have in black and white in the form of a rule, that a fight is something which is going to be regarded very gravely by management'.

Despite this common sense guidance, it is advisable to include fighting as an example of serious or gross misconduct – i.e. one that is potentially a dismissible offence – so that the rule is explicit. However, the suggestion that fighting will always (or automatically) result in dismissal needs careful consideration. An employee may need to 'fight' simply in order to resist the aggression of, or to protect or defend him or herself from, another – or to react when placed under severe provocation. Indeed, provocation could be bullying and thus illegal itself. Tribunals may well view a dismissal in such circumstances, and without investigation, as unfair. Rather than take precipitative action it might be preferable for the employer to suspend the employees involved and to investigate the circumstances before arriving at any decision.

Case study

In *Taylor v Bruce Peebles Ltd*, a tribunal found that the dismissal of an employee with 20 years service who exchanged blows with another employee was unfair.

Instant action

When a fight occurs, regardless of determining whether one aggressor was at fault or it seems equally the fault of all involved, instant action should be taken. If the relationship between two or more employees has reached the state where blows are exchanged, separation and a cooling off period is essential. After initial investigation, suspension with pay of both may well be the safest course of action – with a requirement that they leave the premises at different times to avoid any resumption of hostilities outside the employer's premises. Removing those involved should allow the employer to carry out a full investigation of the circumstances which can be completed by questioning the protagonists when their suspension ends.

Failing to follow the above approach carries two dangers:

1. there could be a resumption of fighting or aggravation during the remainder of the shift (and following its end); and
2. allowing work to resume as if nothing had happened conveys the 'silent message' that the employer does not regard it as too serious a matter which may pose problems later.

Case study

In an unfair dismissal case, an employee had been goaded by another to such an extent that he faced up to his tormentor and when the latter raised his hand, the employee believing he was to be struck, held up his own hand to deflect the blow and in doing so caught the tormentor's head a glancing blow. The employee then ran away, believing he would be struck. After this confrontation, described by an onlooker as 'a bit of a scuffle', which took place in the opening half-hour of an 8 hour shift, both employees were allowed to continue their shift – working within the same room. Both were later made subject to disciplinary proceedings and dismissed. The tribunal were very concerned that the employer, in neither separating nor suspending the employees involved, had initially given the impres-

continued over...

sion that the incident 'was no great deal'. The subsequent dismissal of the long-service employee with a good record, who as the evidence showed had been subjected to considerable provocation and bullying by the tormentor, was felt not to be the action of a reasonable employer and thus was unfair dismissal (although the employee was held to have contributed to his own dismissal).

Horseplay

Less serious, yet potentially as dangerous, is horseplay and practical jokes, particularly where these involve or occur adjacent to machinery processes or power. For example, at one time it was fairly common for compressed air hoses to be played on employees by their colleagues in 'fun'. However, should compressed air enter the bloodstream it can cause fatal embolisms. The suppliers of equipment that, wrongly used, can cause injuries of this nature, are required to draw attention to the dangers, but, nevertheless there should be a rule prohibiting such action which can underline the dangers. Even verbal 'jokes' should be controlled as these can get out of hand and create the potential for employer's liability.

Initiation rites

Initiation rites, whether or not these utilise equipment or processes, must be outlawed. Whilst it is claimed that these are harmless 'fun' they are often degrading to the victim. Whether the activity is 'fun' or 'degrading' may depend on the relative positions of the parties. Such activities can cause injury and may, since they often involve action brought by members of one sex against another, be construed as harassment or BULLYING which can have the effect of making the perpetrators (and the employer) potentially personally liable. Since the penalties for harassment are substantial (fines of up to £5,000 and/or up to six months imprisonment as well

as a liability for personal compensation with increased penalties imposed by the Protection from Harassment Act) advertising these facts may help stamp out the practice. In addition, under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR), employers are required to reports acts of 'non-consensual physical violence' done to a person at work – and horseplay and initiation rites, as well as fighting, can be categorised as such.

'Instant' dismissal

Fighting will normally be regarded as meriting dismissal. However, it would probably be wise to resist the temptation to 'instantly' dismiss. Although it is possible to dismiss without notice and the Employment Act 2002 allows employers to ignore the requirement to provide a 'complaint form' with 'reasonable notice', in such circumstances, the safest response when faced with such a situation may be to:

a) suspend the employee(s) on pay

b) investigate all the circumstances

c) set up a disciplinary hearing (at which the employee should be given the option of being accompanied)

d) allow the employee to explain his version and to suggest any mitigating circumstances

e) make a decision, which, if the case is proven, might be 'dismissal without notice' that is summary dismissal.

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Fire

Basis for inclusion

Commercial advisability

Potential liability

Background

Unless they have been involved in a fire, many people hearing a fire alarm seem affected by inertia. To ensure prompt evacuation this inertia must be overcome by means of constant practice, so that the automatic response is to move, not freeze. Evacuation may need to be hastened by specially appointed employees acting as Fire Marshals (and deputies, to cover absences). Regular fire alarm tests and evacuations should be held.

Commentary

The organisation fire instructions should be given to all employees and all recruits as soon as possible after starting – possibly forming part of the initial documentation and certainly featured as part of the FAMILIARISATION process and induction course. The Fire Precautions (Places of Work) Regulations 1997 require employers to be pro-active regarding:

- carrying out assessments related to fire risks;
- ensuring there is appropriate fire-fighting equipment and, if manual equipment is provided, indicating its location clearly;
- training employees in fire-fighting procedures and techniques;

- ensuring all emergency exits are kept clear, are well-indicated and accessible and, when dark, are lighted; and
- adequately maintaining all fire-fighting equipment.

Fire authorities are currently responsible for ensuring compliance with these regulations. Failure to comply will not only lead to the issue of enforcement certificates but is also a criminal offence.

Draft procedure

1. Procedure and advice

The alarm is tested every week/month at [Time] a.m./p.m. You must familiarise yourself with the alarm and, should it ring other than at the test times, follow the evacuation procedure IMMEDIATELY.

Details of the primary and back-up evacuation routes of each department are posted within the department. You must familiarise yourself with such routes.

Each department has a fire marshal and deputy, to oversee all evacuations. All employees must comply with instructions issued by fire marshals or deputies.

2. Drills

Fire drills are held [monthly]. When the alarm sounds for a drill or at a time other than at the test times:

a) If it is safe to do so, switch off your machine and close any windows in the immediate vicinity.

b) Proceed to the department's primary evacuation route, or, if the primary route is blocked, to the secondary route.

c) After evacuation, assemble in the designated assembly point for your department and ensure your name is checked by the Fire Marshal (or deputy) – follow the Marshal's (or deputy's) instructions.

d) Do NOT return to the building or attempt to move a car from the car park unless instructed to do so.

e) DON'T RUN. DON'T PANIC. DON'T USE LIFTS. DON'T VISIT CLOAKROOMS or collect bags, etc.

3. Discovery

If you discover a fire:

a) Operate the nearest Fire Alarm call point.

b) If there is no immediate danger to life, attack the fire with the appliances supplied.

c) If the fire seems to be gaining a hold, or life is threatened in any way, abandon such fire-fighting activities and evacuate.

d) Make any knowledge, related to the fire, known to the Fire Brigade.

Housekeeping

Simply to exist fire needs three constituents – ignition, fuel and time. All means of ignition should be strictly controlled; waste materials should be properly stored, rubbish should not be allowed to accumulate elsewhere and there should be regular inspections of the whole facility. If the risk of fire is to be minimised and the employer is to be potentially free from liability, they must be pro-active in preparing employees for the danger. Fire is of course a risk and directors of listed PLCs are required as a result of the Turnbull report (now part of the Combined Code of Corporate Governance), to assess all risk and to prepare control and restitution processes related to all risks potentially affecting their business.

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First aid

Basis for inclusion

Moral and legal obligations

Background

Apart from the moral obligation for employers to assist an employee hurt whilst under their control, they are legally obliged to provide a minimum level of immediate assistance.

Commentary

First Aid is action carried out by laypersons to preserve life pending attendance by a trained medical practitioner. Employers should stipulate that those carrying out first aid should never initiate action which goes beyond the limits covered by this definition. As well as providing assistance in the event of injury, etc., employers are also required to notify appropriate authorities under RIDDOR (the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations) of all reportable incidents affecting everyone on their sites whether employed or visiting. The 1995 revision of the regulations requires employers to report acts of non-consensual physical violence done to a person at work.

Legal obligations

Under the Health & Safety (First Aid) Regulations 1981 (and the revised code of practice issued in 1997) (available from Health & Safety Executive, PO Box 1999, Sudbury, Suffolk CO10 6FS – Tel 01787 881165) an employer is obliged to provide:

- suitable first aid staff and services in accordance with the nature of the business, the degree of danger or hazard in the operations, the number of employees and the proximity to medical assistance. As a guide, it is felt that one first aider per 50 employees in a low risk environment (e.g. office, shop, etc.,) is probably adequate. If there are less than 50 employees, someone responsible should be appointed to act in the event of an incident. In higher risk environments, there should be one first aider for up to 50 employees, plus one first aider for every additional 50 employees. A first aider is defined as someone who holds a current certificate in first aid.
- The employer should also provide a first aid room (if there are 400 or more employed at a single site), but again its provision will depend on the assessment of the hazards.
- First aid boxes will normally contain:

  a) a guidance card;

  b) 20 sterile adhesive dressing (assorted sizes)*;

  c) 2 sterile eye pads;

  d) 6 triangular bandages (for use as slings);

  e) 6 safety pins*; and

  f) 6 medium, 2 large and 3 extra large wound dressings.

(In the food and catering industries, special detectable dressings and pins may be required.)*

All dressings, etc., should be individually wrapped. Protective gloves and an airway should be provided for First Aiders (to provide protection against possible AIDS/HIV and other infections).

Draft policy/procedure

1. The [employer's name] provides a workplace and processes in compliance with health and safety regulations to ensure a safe location for its employees and visitors.
2. For occasions when first aid must be provided [employees names] have volunteered to provide such assistance.
3. The Organisation sponsors its First Aiders by:
   i) funding their training to acquire a certificate of competence, and any updating required; and
   ii) giving each First Aider an annual honorarium of [£50] in recognition of their assistance.
4. The First Aid room is available for all employees who need rest after injury etc. Such use must be authorised in advance by a manager or a First Aider.
5. The duty of First Aiders is to preserve life until the attendance of a paramedic or qualified medical practitioner, to reassure the patient, and to ensure the speedy removal of the patient to hospital in the event of a serious accident. First Aiders are not permitted to issue drugs of any description, or to offer medical advice. No liability can be accepted by the Organisation, or individual First Aiders, for attending and helping in a situation requiring first aid.
6. In the event of an accident or an employee feeling unwell – a supervisor should call a First Aider who will treat the patient (as above) and enter in the Accident Book the patient's name, the nature of the accident or incident, the patient's condition and details of any treatment given, with a note of the time, date and place.
7. If the accident is a simple cut or abrasion, the First Aider, or the patient, can clean the wound and apply an adhesive dressing. If the patient feels unwell, they should be taken to the first aid room and allowed to sit or lie quietly for 30 minutes. If the feeling continues, the patient should either be taken home, taken to their, or the organisation, doctor or to hospital. Organisation transport should be used rather than the employee's own vehicle. No liability

will be accepted as a result of the Organisation trying to assist in these ways. In the event that the employee's vehicle is left on Organisation premises, efforts will be made to protect it, but no liability can be accepted for it.

8. If a First Aider considers an incident is serious and that emergency treatment is required, they will be responsible for summoning an ambulance. The First Aider will brief the ambulance staff and, should the circumstances require, either the first aider, or [a Personnel Department] representative, should accompany the employee to hospital, and either remain there until completion of treatment, or until the family of the employee have been summoned, depending upon the circumstances.

9. First Aiders are expected to set an example by maintaining a high level of personal hygiene, e.g. washing their hands and removing overalls, before administering treatment of any kind. If a First Aider needs to deal with bleeding, burns, sickness or risk of contact with bodily fluids, they should wear the protective gloves provided in every first aid box. Such gloves should be disposed of safely after treatment. Any clothing which becomes soiled, should be removed as soon as appropriate and carefully cleaned. Any treatment dressings or swabs, etc., should be disposed of hygienically.

10. In the event of artificial resuscitation being required, an airway (provided in each first aid box) should be used rather than direct, mouth to mouth, contact.

11. Any First Aider required to provide treatment, whilst suffering from a cut or abrasion, should ensure such cuts, etc., are adequately protected.

12. Each First Aider will be responsible for a first aid box and for the re-ordering of dressings, so that the minimum contents are always available. Only a First Aider should have access to a first aid box.

Fixed term contracts

Basis for inclusion

Legal obligation

Background

To avoid the impact of the employment protection rights, some employers 'recruited' workers on fixed term contracts which minimised – or even completely excluded – their rights. To combat this, the EU enacted a directive which protected those working on such contracts and effectively reinstated their employment rights.

Legislation

Under the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (unless any differences can be objectively justified) those working on a fixed term basis and doing comparable work to a permanently employed person:

a) generally must not be treated less favourably than that permanent employee (thus, they must, for example, be given similar occupational holidays, sickness benefits etc.);

b) must be advised of permanent vacancies in case they wish to apply to transfer to permanent status;

c) have a right to receive an explanatory statement if they believe they have been subjected to less favourable treatment;

d) are protected from sanction if they try to enforce the rights given them by these Regulations; and

e) have the right to convert to permanent employment once they have worked under a fixed term contract(s) for four years. Since statistics indicate that 70% of employees do not stay with one employer for more than four years, a person working on a succession of fixed term contracts lasting more than four years is likely to be more 'permanent' than many employees.

f) cannot waive their redundancy rights even if such a clause is inserted in their contract(s).

Gaps

Many of those working in this way may be given a succession of contracts. To avoid the rights, some employers might be tempted to ensure there are breaks between each fixed term contract – thus breaking continuity.

Case study

In *Booth v United States of America*, the EAT accepted that an intentional break between two short-term contracts, the purpose of which was acknowledged to break continuity of employment, was acceptable and did indeed break continuity. The EAT stated 'if an employer is able to employ people in such a manner that the employees cannot complain of unfair dismissal.that is a matter for him'.

This is an old ruling and until there is case law concerning people used on a succession of fixed term contracts separated by contrived breaks, it may be unwise to rely on it. A test case would be useful – however, employers should always remember the old advice 'never be a test case'!

Flexible working

Basis for inclusion

Legal obligation

Potential commercial advantages

Background

It is rare for an employee to work for the same employer from leaving school until retirement. There is also an increasing tendency for the hours worked to be anything but standard and, particularly for parents with young children, for there to be a demand for tailor-made hours, job-sharing etc. The EU recently published the following proportions of types of contracts related to employment in England and Wales which demonstrates the movement to a greater flexibility in the types of employment on offer: 57% are employed on full-time contracts (15.4 million assuming a 27 million workforce), 25% are part-time (6.8 million), 6.2% are on fixed term contracts (1.7 million) and 11.8% are self-employed (3.2 million).

Commentary

Employers are under pressure to create a climate where flexible employment is the norm rather than the exception, even to the extent that some of their employees may work from home (see HOMEWORKING) rather than from the employer's premises. This trend towards non-standard hours can only increase and employers need to be able to adapt their operations

to suit a growing demand. In a recent survey 1,000 employees were invited to choose one of three alternative extra benefits, either:

- an extra £1000 salary; or
- a company car; or
- the right to choose their own hours of work.

70% of the employees chose the right to choose their own hours. In seminars where I posed this question, the proportion choosing flexible hours has usually been higher. This is a preference particularly evident amongst younger employees (who would of course be more likely to have child rearing and caring obligations). However, such employees as they age will form an increasing proportion of the working population and their views are likely to become the norm. In the UK we face a skills shortage and if employers wish to attract and above all retain the best employees, this desire for working other than the traditional and standard hours must be faced. Indeed, many employers (both large and small) who have allowed such flexibility have reported increased productivity.

Employees with parental responsibilities (see detail below) have a legal right to request that their hours be altered. A recent survey conducted by the Chartered Institute of Personnel and Development (CIPD) disclosed that:

a) 66% of those asked had received a flexible hour's request;

b) 50% of such requests had been agreed;

c) 90% of those agreeing to flexible hours said they experienced no problems;

d) 47% stated that staff not entitled to make the request resent those who are (see below);

e) 70% are willing to consider request from all employees; and

f) 50% of those in receipt of requests had not received any requests from men.

A range of options

Flexible working arrangements are numerous:

- Flexi-time where employees are able to vary their entry and exit hours provided certain 'core time' in the day is worked. Some employers vary this so that employees can 'bank' time additional to normal total hours in a week and take time off in lieu (TOIL) later.
- Staggered hours where hours, possibly because of travel difficulties are allowed to vary. Again this is usually tied to the working of certain 'core hours' each day.
- Part-time and/or job sharing where there can be benefits of flexibility to both employees and employer (sometimes job-sharers can cover the 'other shift' in emergency as well as their own).
- Term-time working where the hours are geared to those with children at school, allowing time off for much of the normal school vacations.
- Voluntary time working where the employee agrees to reduce the number of hours worked on a voluntary basis (although the right to request this may be best set out in the contract).
- Annualised hours where there is a variation in demand for the product or service provided.
- Compressed hours where a few long shifts (e.g. 4 x 10 hours shifts) can be substituted for a normal 5 day 8 hour worked week. Output may need to be measured since working longer shifts regularly may lead to reduced output per hour.
- Shift working and shift swapping. This usually entails paying a shift premium, since almost certainly some of the time will be 'unsocial' and thus demanding of a higher rate. Allowing those working shifts to swap time informally is often highly valued.
- Self-rostering whereby an employee sets their own times. This can work effectively particularly where there is a defined project to be completed within a set timescale.

- HOMEWORKING (likely to expand rapidly)
- Sabbaticals, leave of absence, employment breaks etc. can also provide motivation to employees. The right to take these is usually restricted to longer service employees and thus can be usually as a form of loyalty bonus.

The 'right' to work flexible hours

Those who have parental responsibility for children aged up to 6 (18 for a disabled child) who have a minimum of 6 months service with their employer are entitled to lodge a formal request to work flexibly. Such a request must be in writing and must set out the hours/days etc. the parent(s) would like to work. Any change is permanent. An employee can ask once a year (if their request is rejected).

Required procedure

- The employer must make a practical business assessment of the request (and its impact) – ideally, in writing.
- Within 4 weeks of the request, a meeting between employer and employee must be held to discuss the request and its implications. At such a meeting the employee has the right to be accompanied by a workplace colleague. Failure to allow representation is a breach of a statutory right for which the penalty is 2 weeks pay (to a maximum of £270 p.w. – February 2004).
- Within 2 weeks of the meeting the employer must write to the employee setting out, either:

  i) any required action on which the decision to agree the flexibility is to be based and setting a date for commencement. (This date is suggested should be at least two months later to allow arrangements to be set up.);

  OR

  ii) any compromise offer (which should include a date by which a response is expected); OR

iii) a rejection of the request giving explanations of the business reasons for such decision AND setting out the appeal procedure.

- Reasons for rejecting the request could include:
  - burden of costs;
  - problems meeting customer demand;
  - inability to reorganise the work;
  - problems meeting quality levels required;
  - problems meeting performance output;
  - inability to find other employees to cover the hours not now to be worked; or
  - other reasons specific to the employer.
- Employees can appeal an adverse decision (using the Appeals procedure in the Employment Act 2002).
- If (and only if) all internal procedures have been used, employees have the right of access to an Employment Tribunal which can award up to 8 weeks pay (to a maximum of £270 p.w. Feb 2004). Tribunals must examine the procedural aspects of the case (referring it back to the employer if these are faulty) or facts claimed have been found to be incorrect.

To be able to resist claims of unfair treatment employers should record every step in the procedure and any reasons for not allowing a request in writing – and to have every meeting attended by a note-taker for this purpose. After this new right was introduced, the Health & Safety Executive quoted the following statistics:

- Of approximately 350,000 new mothers in employment each year around 240,000 will return to work after maternity leave.
- These new rights should encourage the figure of those returning to increase by 10% thus relieving employers of the costs of recruitment.
- If each recruitment costs £3,500 and a block of recruitments are saved – that equates to £39 million saved.

'Increased cost' as a defence

As noted above, one of the legitimate reasons for an employer rejecting a request to work flexibly is that they will incur 'additional cost'. In at least two cases (*Steinicke v Bundesanstalt fur Arbeit* and *Kutz-Bauer v Freie und Hansestadt Hamburg*), the European Court of Justive held that the fact that part-time working might increase an employer's costs could not justify discrimination against such workers. Rulings of the ECJ are binding on all EU member countries and thus the UK government will need to address this point.

Short-term contracts

Partly as a result of attempts to avoid the impact of employment protection legislation, a number of employers have in the past offered contracts of three months or less to what they may regard as casual employees, although in some cases, once one contract has ended and a brief interval elapsed, the employees are re-engaged under another short-term contract.

Case study

In *Booth v United States of America*, the EAT accepted that an intentional break between two short-term contracts, the purpose of which was acknowledged to break continuity of employment, was acceptable and did indeed break continuity. The EAT stated 'if an employer is able to employ people in such a manner that the employees cannot complain of unfair dismissal that is a matter for him'.

This is an old ruling and the rights granted to those employed under such FIXED TERM CONTRACTS would now need to be complied with. Such employees would still be entitled to be given a contract of employment after eight weeks. Although they might be prevented from taking paid holiday in the first three months of their employment, they would still accrue it.

Job sharing

Several tribunals have endorsed the belief that the number of jobs where it is impossible to set up a job-share arrangement is very small. Failure to consider and attempt to set up such arrangements when, for example, a woman is attempting to return to work after childbirth, will normally result in the employer losing a discrimination case.

Case studies

In *Thomasson v Royal & Sun Alliance*, Ms Thomasson wished to return having given birth to her daughter. She set out suggestions for a job share but her employer rejected these and maintained her job (a Business Team Manager) could not be carried out on a sharing basis. After research by the educational charity 'New Ways to Work' confirmed that a range of management and supervisory jobs were suitable for job-sharing, Royal & Sun Alliance agreed an out-of-court settlement of £22,000.

In 1998 in a similar situation Ms Diamond won a £45,000 out of court settlement from the Solicitors Indemnity Fund following them refusing her request to reduce and/or vary her hours so she could care for her three young children.

Both these cases pre-date the right to lodge the request to work flexibly.

The future

The most telling statistic above is that 47% of those not entitled to work flexibly resented those that could. It is likely that employees wanting such flexibility could migrate to employers prepared to meet this increasing demand for flexibility of hours, irrespective of the legal rights by allowing it for all employees, not just those legally eligible.

The requirement for flexibility of hours is likely to be the greatest faced by employers in the 21st century. At a Prime Minister's press conference in April 2004 it was announced that carers with a responsibility for elderly relatives were also to be given the right to request to work flexible hours. It seems unlikely this will be enacted for two or three years but it is a clear indication of the direction in which public/political opinion is moving.

As statistics quoted above demonstrate, the initial requests for flexible working have largely been met. Difficulties may occur when more eligible people try to exercise the same option. Whilst some may wish to revert to working increased hours (although there is no legal right to do this) when no longer subject to young child-rearing pressures, the right applies for children up to age six generating a fairly lengthy period before increased hours might be requested (bearing in mind of course, that many couples have more than one child).

Case studies

Farrelly Engineering and Facilities took a serious look at its high employee turnover and came to the conclusion that the main cause of labour turnover was their long hours. The company decided to cut working hours to 8.30 - 5.00 p.m. (4.00 on Friday) with complete flexibility for family and domestic commitments. Company director/owner Stephen Farrelly stated that "People aren't stressed - they're more refreshed and staff turnover has been dramatically reduced - sales figures have now more than doubled - we don't compete on price, we compete on people."

At the opposite end of the 'number of employees' spectrum Tony DeNunzio, Chief Executive of Asda claims that that company's flexible working practices had contributed greatly to a £4 million reduction in absence costs, act as a key retention tool and are a significant inducement in attracting recruits. Asda employees can swap 'shifts' for family or domestic reasons, 'swap stores' where students work in one shop and in holidays return to their main home and even have 'grandparents leave' for older workers. DeNunzio claims that the success of the process is simply due to the fact that it is "based on what colleagues want and need".

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Garden leave

Basis for inclusion

Commercial necessity

Background

All data regarded as confidential merits protection and those working with such information need to have this brought to their attention. Increasingly, confidentiality undertakings, which may extend for a short period after the end of the employment, may be needed to be incorporated in the CONTRACT. There may also be circumstances in which the company will wish to protect itself against the loss that could be occasioned to them if such employees leave to join a competitor, or set up a business in competition on their own, etc. A number of clauses can be used – e.g. non-competition, restrictive covenants and garden leave.

Commentary

Ideally, a confidentiality undertaking and/or non-competition clause should be signed by the employee at the start of their employment. Their signature could even be witnessed so that:

a) it indicates how important the employer feels the protection is; and

b) they will be unable to deny that the signature is their own.

However, the employee may refuse to sign in which case the document should be handed to the employee in the presence of a third party who can then confirm that the employee was given it, indicating in the statement, the relevant date and time.

Draft clause

1. The work of [the company] consists of [detail], and is, at all times, to be treated as confidential and protected from disclosure. It is an express condition of employment that no employee (and no former employee following the end of their employment) may divulge to a person outside [the company] any such information, or aid the transmission of any such information or data, nor use it except for the purposes of the task for which they are employed.
2. All backup information, graphics, data, statistics, reports, computer programs, inventions, designs and copyright information etc., prepared for or resulting from such work and activity is totally confidential to [the company] and must only be used for its purposes.
3. No such information may be removed from [the company] premises (other than in the ordinary course of business) without the prior written (and express) authority of a [director].
4. Any deliberate infringement of these rules will be regarded as a serious breach of company rules which could lead to summary dismissal and legal remedies for breach of contract and confidentiality. [Accidental breach will also be regarded as a breach of rules and may be subject to disciplinary action.]
5. Employees may only operate within the areas of their own departmental operations and service areas. Access to other areas is restricted to authorised personnel only. Access to the systems of the organisation, particularly, but not exclusively, the computer systems, is reserved to authorised personnel only.

Unauthorised access to, or in any way tampering with, any computer system or software, or computer installation will be regarded as gross misconduct and will render the offender liable to dismissal and prosecution under the Computer Misuse Act 1990. Unauthorised penetration of the system damages its integrity and confidentiality which are of high value to [the company.] Such access is gross misconduct (and thus a dismissible defence) and this applies even where such access is performed merely as a 'prank' or for 'fun' or to 'test the defences', etc. [Other aspects relating to the protection and use of the computer system are covered in the ACCESS and ELECTRONIC COMMUNICATIONS sections and could be repeated here.]

I have read, understand and accept the above:

Signed _____

Witness_____

Dated _____

Whether the reference to accidental breach should be included is a matter for individual decision. In some ways its inclusion may suggest an excuse for those deliberately in breach – that is, if challenged they can claim it to be accidental. On the other hand, the point that even accidental breach (e.g. being careless) can be subject to sanction, helps underline the seriousness of the regard of the employer for the matter.

Case study

In *Denco v Joinson* tribunal it was held that an employee was fairly dismissed when he accessed the wage record details of his employer held on a computer system without any authority to do so. The EAT commented that employers should make it clear to employees that such unauthorised access would be treated as a dismissible offence.

Increased restrictions

Non-competition clauses take the confidentiality requirement one stage further to prevent up-to-date, valuable data possessed by an employee being passed on to a competitor for whom the employee wishes to work. By, for example, requiring the employee to remain idle, for, say, six months (and anything longer may be regarded by the Court as being excessive and 'in restraint of the employee's trade' – that is the ability to earn their own living) before joining the competitor, the original employer hopes that the information to which the employee was privy will become dated and thus of less value. Legal advice may need to be taken to ensure an effective wording. Courts are strict on their interpretation of such clauses and seek to ensure that no 'restraint of trade' is imposed as a result. If it is, then the clause may well be ruled invalid.

Case studies

In *William Hill Organisation Ltd v Tucker* it was held that there was an obligation in the contract of employment for the employer to provide the employee with work during the 'garden leave' (i.e. it could not simply enforce idleness unless this was allowed in the clause).

In *Symbian Ltd v Christensen* it was implied that if the employer wants to make sure the employee does not work in competition during the garden leave this should be expressly prevented.

These two aspects (i.e. the employee not to work in the period, and not to work in competition) need to be set out in the garden leave clause, and in addition the Contracts (Rights of Third Parties) Act 1999 should be excluded to avoid partners and wives requiring the clause to be set aside, since they do not want their partner at home!

Draft clause

The purpose of this clause is to provide protection for the employer in respect of up-to-date knowledge gained by the employee during employment. As such the employer requires that, should a period of 'garden leave' be implemented it is expressly understood that during such leave, the employee will:

- take any accrued holiday to which (s) he is entitled;
- have no right to carry out any work for the employer;
- not approach or enter the premises of the employer (other than at the specific and previous request of the employer);
- not contact any employee or customer of the employer;

- during the whole duration of the contract and during any period of garden leave, not work for or advise a competitor, or set up as a competitor of, this Organisation; and
- not represent him (her)self to any third party as being or still being an employee of the employer.

The provisions of the Contracts (Rights of Third Parties) Act 1999 are specifically excluded from this clause.

Restrictive covenants clause

The above wording could be adapted where the purpose is to try to prevent the ex-employee from:

a) working in the industry for a set period (e.g. six months);

b) working for a competitor also for a set period (six months is probably the longest period a court will allow unless there are specific and vital circumstances);

c) working in a competitive business within a radius (e.g. two miles) where the business is, for example, retail and the goodwill of the existing business could be damaged by its former operative trading nearby; or

d) attempting to poach either or both customers and employees for involvement in the new business.

Case study

In *Dentmaster (UK) Ltd v Kent*, the Court of Appeal held that a contract clause prohibiting, for 6 months after he left, an employee from soliciting any of those who had been customers during the 6 months prior to the termination of his employment and any of those customers with whom he had dealt with during the whole of his employment was enforceable.

Continued representation

The bar on an employee continuing to represent the employer after leaving, attempts to prevent an employee who has departed in unfavourable circumstances holding themselves out to a third party as still being employed and committing the employer to a contract, for example, when they have no real authority to do so. Hence, all those with whom they were working should be advised not only of the departure (e.g. by fax or e-mail) but also if there is a restrictive covenant. Thus, innocent parties are put on their guard against the possibility of being conjoined in any action in the event of an infringement of the covenant. Legal advice should be taken.

Grievance

Basis for inclusion

Legal obligation

Commercial advisability

Background

When an employee has a concern or grievance and as a part of the disciplinary procedure, there should be a means by which such grievances and appeals can be examined.

Commentary

The right of appeal and/or opportunity for an employee to have a grievance heard by someone other than the person against whom the grievance may be lodged, should be obvious.

Case study

In *Goold (Pearmark) Ltd v McConnell* & anor, the EAT held that there was an implied right in an employee's contract to have their grievances heard and settled.

Under the Employment Act 2002 employers must provide a grievance procedure. In this way, not only can the employee's voice be heard, but

it can provide a defence against harassment, victimisation and bullying, prejudicial behaviour, favouritism and bias, and be seen as an important aspect of the employers' commitment to DIGNITY AT WORK.

The principles of a grievance procedure are that it should provide details of:

- how to notify the concern or (if it arises from the application of the disciplinary procedure) the appeal;
- who to appeal to and, should it be rejected by them, details of the next and any further stages;
- time limits that apply regarding each decision; and
- how decisions are to be communicated.

Draft wording

If you have a grievance or have received a warning or been dismissed or have any other concern you may lodge a grievance or exercise your right of appeal under this procedure.

1. [The Organisation] believes that grievances should be settled as quickly as possible. If you have a grievance, you should discuss it first with your immediate superior. Every effort should be made to resolve the grievance at this stage.
2. Your superior will deal with the matter within three working days (either verbally or in writing).
3. If you are not satisfied with your superior's decision, you may make an appeal to the next tier of manager. Again, a decision will be given within three working days.
4. If you are still dissatisfied, you may request an interview with [a director]. A decision will be given within five working days.
5. Finally you have a right of appeal to [the Chairman] whose decision will be final and will be given as soon as practically possible.
6. At all meetings you have the right (if you wish) to be accompanied by a colleague.

7. If the subject of the grievance is discrimination or harassment which involves the employee's own superior, then application for a hearing under this policy may be made to [name – for example, the Personnel Manager] who will then conduct the matter on behalf of the employee. As far as possible in these circumstances the anonymity of the employee will be protected.

Employees have the legal right to be accompanied by a colleague at a grievance hearing. Care needs to be taken since an interchange between employee and supervision could develop into a meeting during which a grievance is lodged. In such a case, failure to invite the employee to have a colleague present could raise the question of whether the grievance hearing was validly constituted.

Record

The administration of the grievance procedure should mirror that of the disciplinary procedure in that at every stage full notes should be kept and that, ideally, as the grievance is progressed persons other than those already involved should try to determine the matter.

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Handbook

Basis for inclusion

Commercial advisability

Background

Including all an organisation rules with the legal obligations in a CONTRACT would create a document that could be counter-productive – it would be so large and so complex that few would read it. One solution could be to include in the contract an outline of the salient factors, and to cross-reference to an employee handbook which contains the detail.

Concept

An employee handbook could be of appreciable size since it will need to provide detailed procedures covering a range of eventualities etc. Its contents should be made contractual and thus, the reference to the Handbook in the CONTRACT should state that the Handbook's contents form part of the contract. Since the contents will be subject to changes in law, custom and practice, and experience etc. this should be advised prominently. Thus, employees are forewarned that there will be changes and therefore not be as concerned as they might otherwise be when these are implemented. It may be appropriate for the employer to undertake that no changes will be implemented without consultation and a lead-in time.

Contents

There follows outline guidance to the content of a handbook; requirements will vary from employer to employer. In some cases an initial sentence for an entry is given to provide a flavour of content. It is not intended to be exhaustive.

Suggested contents

- Introduction: a general statement of what the handbook is trying to achieve, perhaps covered within a welcoming comment from the Chief Executive.
- General information: details of the organisation divisions, locations, products, etc., perhaps with some background as regards its formation, history, etc.
- Organisation chart: an outline of the main relationships of divisions within a group, or an outline of departmental relationships within a smaller Organisation.
- Subject Information:
    - ABSENCE (DUE TO ILLNESS): Please telephone [Number] your Supervisor, Manager or the [Personnel Administrator – PA] immediately you know you will be away. [Detailed rules regarding absence.]
    - ADVERTISING: The distribution of leaflets and/or the display of posters are not allowed without prior written approval from [name]. An employee Notice Board is provided for personal notices, etc.
    - ADDRESS, MARRIAGE, NEXT OF KIN AND OTHER CHANGES OF PERSONAL INFORMATION: Please let [name] know of all changes so that your records are kept up-to-date. You will be given this information each year and asked to confirm it is up-to-date.
    - ACCESS TO PERSONNEL FILE: Please ask [name] if you wish to see your personal file.

- APPEAL: If you are dissatisfied with anything concerning your work or employment, or with the application of the disciplinary procedure, you may pursue the matter under the grievance procedure.
- APPRAISAL: We operate a Performance review and plan scheme [details].
- ATTENDANCE RECORDING: Access to our premises is gained by using an electronic key card which not only opens the door but also records attendance for all personnel, and time of entry/exit.
- CANTEEN: We provide canteen equipment and facilities which you are encouraged to use.
- CASHING PERSONAL CHEQUES: To encourage the use of credit transfer for wage payment, we have arranged facilities whereby you can cash personal cheque(s) to the value of £75 each week.
- COMMUNICATION: We operate an informal communication programme using visits and face-to-face discussion between employees and direct supervision. [Details.]
- CONSUMPTION OF ALCOHOL/USE OF NON MEDICINAL DRUGS/SOLVENT ABUSE: anywhere on the organisation premises is strictly forbidden.
- CONTRACT OF EMPLOYMENT: A copy of your Contract will be given to you with this Handbook.
- DISCIPLINARY RULES: Your attention is drawn to the disciplinary rules ['full details of which accompanied your Contract' OR 'which are set out in full below'].
- DISCLOSURE OF INFORMATION: To protect our business, we expressly forbid disclosure of details of any products, customers, markets, suppliers, plans and/or any other information which might assist a competitor, or in any way damage our business.
- DISCRIMINATION AND HARASSMENT: Your attention is drawn to the Dignity at Work/Equal Opportunities policy rules

['full details of which accompanied your Contract' OR 'which are set out in full below'].

- DISHONESTY: Employees who steal from the Organisation, from its employees and/ or from its clients, suppliers or customers, will be dismissed and the Police will be involved, irrespective of the value of the goods involved.

  DOCTOR: We reserve the right to arrange for our Doctor to examine any employee at our expense.

- EXPENSES: If you incur expenses on behalf of the Organisation, these may be reclaimed on the expenses form.
- EXTENDED LEAVE: Employees with five years service may apply (through their departmental head) to amalgamate the whole of their annual holiday entitlement.
- FAMILIARISATION: You will take part in our comprehensive Familiarisation (induction) procedure.
- FIRE PROCEDURE: [Set out details.]
- FIRST AID: [Set out details.]
- GRIEVANCE PROCEDURE: Your attention is drawn to the Disciplinary rules and Grievance procedure ['full details of which accompanied your Contract' OR 'which are set out in full below'].
- GUARANTEE PAY: (Note: There is no legal right to lay employees off without pay, unless this is allowed in the Contract.) At all times the Organisation will endeavour to provide employment (and pay in respect of such employment) in accordance with the Contract. However, it is impossible to guarantee that this will always be the case. In the event of a long-term downturn in demand for our products, it may be necessary to reduce the workforce – see REDUNDANCY below.
- HOLIDAYS: Your entitlement is set out in your Contract. [Details of booking etc.]
- HOURS OF WORK: Your required hours are as set out in your Contract.

- HYGIENE, CLEANLINESS, and TIDINESS: Our products are produced and sold as high quality items.
- JOINT CONSULTATIVE COMMITTEE (JCC): This Committee (see WORKS COUNCILS) consisting of employee representatives and management nominees, meets every other month to discuss items of interest to employees and management alike.
- LEAVE OF ABSENCE (COMPASSIONATE): Authority for special leave of absence should be obtained from your Manager/Departmental Heads and confirmed in writing by [name].
- LEAVE OF ABSENCE (TERRITORIAL ARMY and ARMED FORCES): Members of the Territorial Army required to attend annual training will be granted one weeks unpaid leave of absence, with a contribution of £50 towards expenses, etc.
- LOST PROPERTY: Any goods or money found should be handed in to [name].
- MATERNITY: Employees who wish to take maternity leave should contact [name] at the earliest opportunity.
- OVERTIME: Payment will only be made for Overtime in accordance with the provisions in your Contract.
- OWN PROPERTY: We cannot accept liability for loss of, or damage to, any private property on the premises.
- OVERPAYMENTS: You should always check your wages and, in the event of any discrepancy, raise the matter with your supervisor in the first instance.
- PAY: The details of your initial pay rate are set out in your Contract.
- PAYMENT IN LIEU OF NOTICE: In the event of our needing to give you notice, we reserve the right to request you not to attend during the notice period to which you would be entitled under your Contract, and to make a payment in lieu of the amount of wages due for that notice period, less appropriate amounts of tax and NI.

- PAYSLIP: Full details of your gross pay, deductions and net pay (with any relevant calculations) are shown on your payslip each week/month.
- PENSION SCHEME: [Details of occupational pension scheme or of stakeholder pension access, one or the other of which must be made available should be set out.]
- PERSONAL PROBLEMS: If asked, we try to help employees with problems. If you are experiencing a personal problem, don't hesitate to ask to discuss it with your Supervisor/Manager, or [name].
- PROMOTION: Wherever practical, and the employee wishes it, promotion from within, with appropriate training, will be attempted. Vacancies [below managerial level] will be displayed on the Notice Boards whenever the situation permits.
- PROTECTIVE CLOTHING: Some jobs, because of their nature, involve the wearing of protective clothing and/or equipment. Under the Health and Safety at Work Act, every employee has an obligation 'to take reasonable care for his health and safety'.
- PUNCTUALITY & TIDINESS: You are expected to arrive for work punctually.
- PURCHASE OF COMPANY PRODUCTS: Regular staff sales are held at [place] which you will have the opportunity to purchase returned, slightly substandard or surplus products at a deep discount, as well as normal products at a smaller discount, for your own use.
- QUALITY CIRCLES: We believe that our employees have much to offer our Organisation in terms of ideas and suggestions for improving systems, procedures and products. Quality circles are a means whereby such ideas, suggestions and improvements can be discussed among the normal working group.
- RAFFLES (and gambling, running clubs and private trading): [except with a Director's permission] are not allowed on our premises.

- REDUNDANCY: [Include full details of policy.]
- REPAIRS TO MACHINERY, etc.: Unless you are specifically employed to undertake this kind of work (as evidenced by your Job Description), on no account should you attempt to carry out any repairs or maintenance, or to interfere with any supplies or equipment.
- RETIREMENT: You may work beyond the normal retiring age of 70 subject to it being safe for you to do so, and your capability to perform is not impaired.
- RIGHT OF SEARCH: We reserve the right to search the person or property (including any vehicle) of an employee when leaving the premises.
- SAFETY: [Full safety policy/procedure.]
- SAVE IT: Energy, materials and time are all consumed during production and other working activities – help us reduce costs.
- SMOKING: is only permitted in the reserved sections of the Canteens and Rest Rooms.
- SOCIAL ACTIVITIES: We encourage informal arrangements made by employees.
- SUGGESTION SCHEME: We encourage all employees to submit suggestions, either through their team meetings or individually via this scheme. [Set out details, specimen forms etc.]
- TELEPHONE CALLS: Except in an emergency the organisation telephones may not be used for personal calls.
- THEFT: We take a very serious view of employees stealing products or other Organisation or employee's property or services, and our policy is to prosecute in all such cases.
- TRAINING POLICY: We believe that Effective Training = Increased Competence = Improved Business Performance. [Detail.]

Updating

Circumstances change and rules will need regular updating. Although with word-processing facilities the actual updating process is relatively easy, there is a cost implication, but more importantly, a communication problem. Changes need to be explained before implementation, hence, the idea of advising this at the start of the handbook.

Example

'This handbook summarises the rules of the Organisation as at [date]. Inevitably such rules need changing from time to time. Changes will be notified to all employees giving at least 28 days notice of their implementation (unless this is impractical). Such new rules will be operative from the expiry of the notice period.'

It may be found more convenient to produce the handbook in a loose-leaf format so that changes do not entail a reprint of the whole document.

WARNING: With the requirement to comply with ever-increasing (and complex) legislation employees can become personally liable for breaches of such legislation (for example, discriminating on the various grounds). It may be advisable to indicate to employees that, in order to try to ensure that this does not occur, they endeavour at all times to be familiar with, and to comply with, the rules, regulations and procedures. In turn, this may lead to a request for employers to 'hold them harmless' from the effects of their actions – a request which could be granted, but only provided that action was in accordance with such rules, etc. An employer cannot hold an employee harmless from the effects of breaking the law of the land.

HIV/AIDS

Basis for inclusion

Commercial advisability

Potential liability for discrimination claims

Background

It should be unnecessary to have a specific policy regarding employees suffering from HIV/AIDS as the disease may be better regarded as a sickness to be covered by the employer's SICKNESS policy – although specific reference might be needed to advise employees of the fact that the employer has retained counselling and medical assistance. The ignorance and prejudice that surrounds the illness however, may make it advisable to address the problem separately.

Commentary

In view of widespread concern at the proximity of AIDS sufferers, such victims may need to be included as a category within the organisation anti-discrimination policy. Employees should be advised that those suffering from AIDS are rarely a risk to other employees. If despite informal re-assurances, an employee refuses to work alongside or to relate to an AIDS sufferer the employer should arrange an interview with a medical adviser to provide expert advice on the subject. If this is not effective it may be necessary to raise the matter under the DISCIPLINARY procedure although if there are any other means by which re-assurance can be given these may be preferable. If the employer has included AIDS sufferers as a category in a DIGNITY at WORK policy, this should be referred to, indi-

cating that the full weight of the disciplinary procedure can be utilised. Ultimately of course, the disease may affect the performance of the employee's work, so that dismissal might need to be considered on these grounds under the normal policy for long-term SICKNESS and disability.

Employee guidance

1. Acquired Immune-Deficiency Syndrome (AIDS) is a disease which is less contagious than many other diseases. AIDS can only be generated by the Human Immune-Deficiency Virus (HIV) but even those who have the HIV virus do not necessarily contract AIDS for several years.

2. There is virtually no way that an employee who works with or alongside someone suffering from the HIV virus, is at risk of contracting the disease. An employee believing this not to be the case can apply for a counselling session with the [organisation] medical adviser.

   (**WARNING**: Should employees work with sharp implements immediately adjacent to each other it is just feasible that the disease could be transmitted as a result of simultaneous cuts. Employers should take specific advice on minimising even such a remote possibility.)

3. The HIV virus (which causes AIDS) can only be spread by sexual contact, by an infected mother to her unborn child, or by blood infection (for example, by using a drug injection needle that has been used by an AIDS sufferer or someone who is HIV positive). Other than these three main contagion-risking areas, and those whose work involves piercing the skin (e.g. tattooists) or handling blood who may need to take precautions, it is not possible to contract HIV or AIDS in employment.

4. Employees who fear the risk of contagion from an HIV or AIDS infected colleague should be re-assured by the foregoing but the [Organisation] is prepared to arrange counselling sessions for anyone still concerned as set out in 2 above.

5. First Aiders who may be required to treat open wounds, etc., of HIV or AIDS sufferers will receive special training as well as having available airways for mouth to mouth resuscitation, plastic gloves and breathing masks. There is no recorded case of the virus being transmitted in this way.
6. In view of the foregoing, employees are expected to work normally with and alongside any HIV or AIDS sufferer, and to treat them as they would anyone else with a serious disease. Refusal to work with an HIV or AIDS sufferer will be regarded as a breach of the organisation discrimination and disciplinary policies to which the attention of all employees is drawn.
7. The [Organisation] appreciates the concern that there is regarding this disease but stresses that, in view of the lack of risk to fellow-employees, although it will be sympathetic to those who have concerns, it expects everyone to behave with maturity and to give HIV/AIDS sufferers normal respect. Failure to act in accordance with the requirements of this policy will be grounds for disciplinary action.

Advice

Leaflets 'AIDS at work' and 'AIDS in the Work Place' are available from the Department of Employment. Providing employees with copies, possibly backed up by a briefing by a medical expert, may assist in what can be an emotionally charged situation.

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Holiday

Basis for inclusion

Legal requirement

Possible additional contractual right

Background

Until the Working Time Regulations granted it, unless it was provided in their CONTRACT, employees had no right to paid holiday even though they were entitled to be paid when taking time off in a number of other instances (see LEAVE).

Legal requirement

Under the Working Time Regulations in 1998 all employees with at least 13 weeks service became entitled to 3 (now 4) weeks paid holiday in a full holiday year. The 13 weeks service requirement was subsequently scrapped so holiday entitlement accrues from the first day of employment. However, those who work a probationary period of 13 weeks do not have to be allowed to take paid holiday during that period (even though they accrue the entitlement). Contractual holiday can be offset by the statutory holiday entitlement.

Employers can stipulate their own holiday year which is usually either the calendar year or the fiscal year (1st April – 31st March). Entitlement in the first (usually broken) year of service can then be related to the number of months – for example 1.67 days for each complete month (the annual rate divided by 12). Statutory holiday is similarly related to the employer's

holiday year but, if there is no holiday year stated, the anniversary of the introduction of the legal right is used. Since this is a very inconvenient date to use, stipulating a holiday year is advisable. Since the statutory right includes any paid public and Bank Holidays it is perhaps also now advisable to use the calendar year as the holiday year.

Case study

In *Armstrong v Walter Scott Motors (London) Ltd*, Mr Armstrong told his employer that he was entitled to paid holiday and did not have to wait until the end of a year before he should receive pay for holiday. Thus, he asserted his statutory right to paid holiday. He was dismissed and successfully claimed unfair dismissal for breach of his statutory right.

Incidence

Whereas an employer may allow contractual holiday to be carried forward to a following holiday year and/or even make an equivalent payment in cash, where holiday remains untaken at the end of the period, neither of these concessions apply to statutory holiday. Statutory holiday must be taken within the holiday year to which it relates and, except where an employee leaves and has accrued but not taken some holiday entitlement, can never be paid as a cash alternative. This reflects the EU's commitment to the concept that all employees should have a period away from work and paying in lieu would encourage some to work through their holiday.

Notice

Employees taking statutory holiday are required to give twice the length of the holiday required as notice of their intent. Since this would be insufficient notice for many employers, they can require that a longer notice period is provided. If the end of a holiday year is approaching and the employee shows no sign of taking their entitlement, the employer can nominate days on which the statutory entitlement must be taken. If employees are not required to work on bank or public holidays these can be used (provided they are then paid for) to absorb part of the statutory holiday entitlement.

Accrued contractual holiday pay

Unless the contract so stipulates, there is no entitlement to be paid in respect of accrued contractual holiday on leaving, although many contracts state that the allowance related to the number of full months of the last (usually broken) holiday year, less any holiday taken in respect of that year, will be paid with the final wages. Payment made in respect of untaken holiday in this way is taxable.

Contracts should include a clause allowing the employer to recover any paid holiday taken in excess of the entitlement. Unless this is stipulated, such excess entitlement may not be able to be reclaimed.

Holiday entitlement during leave, notice etc.

a) Maternity

Employers are required to preserve non-monetary contractual benefits for employees during maternity leave and this includes holiday. Arrangements must be made for the holiday to be taken, or an amount paid during the leave. Any rules prohibiting the carrying forward of contractual holiday at the end of a holiday year should be altered to grant an exception for those accruing holiday whilst on maternity leave which bridges a holiday year.

b) Garden leave

Generally a period of enforced idleness (GARDEN LEAVE) under the contract will entail continued accrual of all rights including holiday and thus the employer in stipulating the employee takes garden leave should nominate the required amount of outstanding days as holiday – to avoid the possibility of paying twice.

c) Parental, adoption and family leave

Holiday entitlement continues to accrue.

d) Holiday pay during notice

Holiday entitlement continues to accrue.

e) Payment in lieu of notice (PILON)

If the employer wishes to bring a contract subject to notice to an end without requiring the employee to work such notice, a PAYMENT IN LIEU (tax free unless the right is in the contract or the payment is made as a matter of routine) can be made. This must reflect the value of the contract – including pay and benefits for the notice period. However, there should be no need to pay for holiday since a payment is already being made for that period.

The application for and the granting of paid holidays (other than for public and Bank holidays) should be monitored so that employees do not take more than their entitlement. (See ABSENCE.)

Paying for holiday for non-standard employees

Where an employee does not work normal hours or regularly, it can be difficult to calculate the amount of holiday pay to which they are entitled. To ensure they pay the amount of holiday to which the employees is due, some employers use a 'rolled up rate' (RUR). To use a 'RUR', an employer

agrees to pay an hourly rate for the job plus a proportion of that hourly rate as a payment on account of holiday pay. This seems a logical way of coping with the obligation in respect of those who work on an ad hoc basis.

Example

The statutory entitlement to paid holiday is 4 weeks – usually referred to as 20 days. If it is agreed there are 260 working days in the year then the holiday proportion is 20/260 or 1/13th. If the hourly rate was £13 this would be the 'wage' and an additional £1 could be paid as the contribution to holiday pay with each hour's pay.

Case studies

In *MPB Structures Ltd v Munro*, the Scottish Court of Session held that if an employer paid a 'rolled up rate' incorporating the cash equivalent of holiday entitlement, this was a breach of the Working Time Regulations. Where this has been done the worker is still entitled to holiday pay during their holiday.

Thus, use of an RUR was ruled to be unlawful – but that ruling is only effective in Scotland.

In England the EAT heard five cases under the general heading *Marshalls Clay Products v Caulfield* and held that it was acceptable to pay a RUR provided this was 1) set out at recruitment 2) clearly laid down in the contract 3) the amounts were separately identified on each pay slip and 4) that the employer checked to make sure the person actually took holiday.

However, in *Robinson-Steele v RF Retail Services Ltd*, the tribunal declined to follow the EAT's ruling in Marshalls Clay Products and referred the whole question of whether RUR was permissible to the European Court of Justice.

Non-employees rights to holiday

Case study

In *Byrne Brothers (Formwork) Ltd v Baird & ors*. Mr Baird and his colleagues each signed a subcontractors agreement to provide carpentry services to Byrne Bros. The contract stated that they were not entitled to holiday pay.

However, when they were not paid for any holiday, they challenged this in a tribunal and at the EAT gained confirmation that they were entitled to be paid for holidays.

The Working Time Regulations state that any person who works under a 'contract of employment' or any other contract 'whether express or implied' and whether 'oral or in writing' is entitled to 20 days paid holiday per year. This is on the basis that a worker is only entitled if they are not 'running a business' and are providing personal services.

Case study

In *Canada Life v Gray and Farrar* it was held that where an employer refused to grant statutory holiday (in this case to two Commission Agents who it claimed were neither employees nor workers and thus not entitled to holiday) at the date of their termination they were entitled to claim in respect of each of the years for which they had been denied holiday (the total amount awarded being around £50,000). As long as a person asks for their holiday within the year to which it relates, if they are refused it, the claim can continue to accrue. (This case is to be appealed.)

Holiday pay when sick

Until recently it was thought that a person could not be both sick and on holiday. If a person fell sick whilst on holiday they would be entitled to SSP (after the three waiting days) and would defer their holiday (and payment for it) until they could take it.

Case studies

In *Brown v Kigass Aero Components* it was held that even though an employee was sick for the entire year he was still entitled to 20 days paid holiday in respect of that period, provided he had applied for it during the holiday year.

In *List Design Group v Catley* not only was an employee able to claim for holiday pay due to him for 2000, he was also allowed to claim for sums due re 1999, even though he had not applied for it.

It can be confusing to discern rights and responsibilities when an employee claims to have been sick whilst on holiday. It is important to make it clear in contract documentation that if a person falls sick when on holiday:

a) they must get a certificate from a recognised medical practitioner

b) their holiday is suspended for the period of sickness. Amounts already paid in respect of the holiday will need to be recovered – but offset by any SSP and occupational sickness benefit (if applicable)

c) the amount of holiday during the sickness should be added to the amount still to be taken.

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Homeworking

Basis for inclusion

Commercial advisability; pending legal obligations

Background

The development of communication technology has led to an increase in the numbers using their homes for a complete range of work. This trend is expected to continue in both those undertaking such work from home and the type of the work undertaken. The Office of National Statistics (ONS) calculate that there are over 2 million home or 'tele' workers in the UK (although other researchers claim a much higher figure – a September 2002 report claimed as many as '1 in 4' work wholly or mainly from home). It has been estimated that the ONS figure (which itself represents an increase of 65% over the past 4 years) could grow to over 8 million by 2010.

Advantages and disadvantages

Homeworkers tend to have a lower incidence of absence and higher morale, than those working at traditional workplaces, with the added advantage of a greater number of productive hours.

Advantages for the employee

- avoidance of the stress and fatigue of travelling;
- being fresh when starting;
- avoidance of travelling costs;

- flexibility to carry out domestic obligations;
- avoidance of normal workplace distractions (noise, irrelevant conversation, phone bells and conversations, other interruptions etc.); and
- contribution to domestic living costs if a dedicated room is made available and 'rent' is paid.

Advantages for the employer

- ultimately less office and/or other space (which, almost certainly, will be more expensive than domestic space);
- lower rates of pay and oncosts (particularly for city commuters) as no allowance needs to be made for travel costs; and
- lower overheads (e.g. reduced catering, car parking and other ancillary space, lower security costs, lower incidence of staff theft etc.).

Disadvantages for the individual

- homeworking can be a lonely occupation and this aspect needs to be addressed in terms of supervision and contact;
- the normal flow of information through which workplace-based employees acquire knowledge can be lacking;
- the homeworker may find it less easy to gain answers to problems or assistance with difficulties being remote from supervision;
- the social aspects of working are largely absent; and
- some workplace-based employees may have a patronising approach to those who do not share their experiences.

Disadvantages for the employer

- flexibility of working hours can pose supervision/control problems;
- higher communication costs (telephone, postage, e-mail etc);

- higher propensity for mistakes to be made and for delay to occur in correcting these;
- lack of feeling of being fully in control, although a requirement for strict adherence to procedures may compensate in part; and
- increased demand for supervision time – with consequent increase in costs.

Administration

Many employers deal with homeworking casually, but a greater delineation of expectations and arrangements is needed with a workplace-based employee.

Supervision and guidance

At the workplace much of this is carried out informally through personal contact – almost without either party being aware of it. This effect is largely absent with homeworkers. There needs to be some substitute for the lack of direct supervision – e.g. regular contact arrangements, regular exchange visits to the workplace by the homeworker and to the office at the premises (the homebase) by supervision, etc., accepted measurement of work quantity and quality, and so on.

Standards of quality and output

It may be easy to set where (say) a number of products are generated, but where the work is administrative or creative, output can be difficult to assess.

Location extension, access etc.

Despite the employee using their own home as their place of work, that location becomes an extension of the employer's place of work and needs to be treated as such. Supervisory access, control of the employee, insurance of property and liabilities, Travelling arrangements to the base office etc., all need to be clarified.

Location and equipment funding and control

Normally the homeworker, where there is a dedicated room for the employer's business, will expect to receive payment for such use. The equipment they need may be provided by the employer but questions of liability, insurance, recovery etc. must be addressed.

Contractual matters

If the homeworker is an employee they are entitled to a contract of employment but, in addition, there are unique contractual arrangements regarding the homeworking which need either to amend or to sit alongside any employment contract.

Policy

There should be a policy regarding the practice.

Draft policy

1. The [Organisation] is committed to the growth of homeworking where this is both feasible and welcomed by those concerned.
2. Those wishing to be considered for this type of work should register this interest with [specify].
3. Those undertaking homeworking need to be able to make a room in their house (the homebase) available for use as an office/workshop for the[Organisation] on a dedicated basis. To compensate for this use the [Organisation] will make a payment of [sum].
4. In the event that a homebase can only be made available on a dedicated basis after some works and/or expenditure, the [Organisation] will consider making an advance recoverable by agreed deductions from subsequent payments to fund these works.
5. The employee will be required to commit to working a set number of hours per [day/week/month] for an agreed sum, although the hours can be varied to suit the requirements of home and office.

However, the employee must be available for core hours which are [specify].

6. The homeworker will be required to sign a homeworking agreement which will cover the items set out in this policy and any further items specific to the individual.

7. To set up the homebase the [Organisation] will provide the following equipment [specify] and pay for the cost of installing renting and using dedicated telephone line(s).

   The employee is required to add the value of the equipment [specify] to their home contents insurance policy, notifying the insurers that their house is being used for restricted business purposes. The insurers should be required to note the interest of the [Organisation] as owner of the equipment on the policy. Any additional costs incurred in insuring the equipment can be re-charged to the Organisation on the first timesheet. This should be accompanied by evidence that the value of the items has been added to the policy and the insurers are aware of the business use.

8. The homeworker will be required to agree a schedule of work from time to time and to report on the work done. Such reports should accompany timesheets which should be submitted on a weekly basis. These reports will include details of all [calls made] and a resume of the response.

9. The [Organisation] reserves the right to visit the premises from time to time and to assess the performance of the homeworker.

10. Other than necessary changes to hours, place of work, etc., the provisions of the employee's contract of employment will continue in force until termination in accordance with that contract.

11. The homeworker will be required to report personally to the Organisation premises on a [weekly/monthly] basis. Costs of such travel and time can be claimed on the next subsequent timesheet.

12. If work/material/goods are given to the homeworker for transport to the homebase (or elsewhere), they will be provided with a letter of authority to ensure Security allow them to pass with such goods.

13. The homebase will be subject to the [organisation] SAFETY Policy and Procedure and the homeworker will be expected to undertake such works (at the employers expense) to ensure the premises accord with the requirement of such Policy and Procedure. Visual display and computer workstations will be checked initially [and at six monthly intervals] for ease of use and compliance with legal requirements. Any alterations found to be necessary will be carried out by and at the cost of the [Organisation].
14. On termination of the homeworking arrangement, the homeworker will return all equipment and material provided by the [Organisation] within 7 days of the termination. The [Organisation] will deal with the cancellation of any telephone line(s). Should return of the equipment not be effected within the above period the homeworker expressly grants to the employer by this agreement a right of access (subject to 3 hours notice between 9.00 a.m. and 6.30 p.m. Monday to Friday) to the homebase, in order to recover such equipment.

Since the employee's home becomes a workplace, it may be necessary to extend Employers Liability insurance cover to homeworkers or outworkers and the [organisations] insurers should be contacted for guidance.

Agreement

The advantage of delineating a policy is that those interested in the possibility of homeworking can immediately gain an outline of what the requirements will be. In addition, an agreement should be concluded. If the homeworker is an employee, they should also have a contract of employment.

Example of agreement

This Agreement is made this [date] between [parties – 'homeworker' and 'employer'] with the purpose of controlling the arrangement by which the homeworker undertakes to carry out work and duties for the [Organisation – 'the Organisation'] at [address of homeworking base] with effect from [commencing date] and is additional to and does not infringe in any way the Contract of Employment between the parties dated [date].

The homeworker agrees that they will:

a) provide a room (the 'homebase') at the above address which will be [solely] used for the work of the employer. If the property is not owned by the homeworker, the homeworker will obtain permission of the owner to the arrangement and produce this to the employer before commencement. Failure to do so may negate this agreement. Should such permission be withdrawn subsequently, notification of this must be given to the employer within 7 working days.

b) carry out the duties set out in the schedule hereto for a minimum of [hours per week/month] on the terms set out in the contract of employment.

c) allow reasonable access to the homebase during normal business hours to the employer and their staff for the purposes of supervision, training etc.

d) staff the homebase for the express purposes of [taking orders, sourcing customers, etc] for at least [number] hours per working day [including between [times] which will be regarded as core times when the homebase should always be staffed] and when not present ensure the fax and answerphone are available to callers. All messages left on answerphone or by fax or e-mail must be acknowledged personally by the homeworker within 3 working hours.

e) not use the equipment provided by the employer for any other purpose than the services covered by this agreement and not to use any computer disks other than those supplied by the employer.

f) ensure the equipment (as confirmed in the attached schedule) is added to the domestic contents insurance policy at the premises and provide evidence to the employer that this has been done and that the interest of the employer has been noted and of each renewal of the cover.

g) provide a weekly time and expense account (a draft of which is included in the attached schedule).

h) keep the homebase tidy and in a safe condition, complying with any safety requirement imposed by the employer.

i) within 7 days of the termination of this agreement either return all the employer's equipment, files, papers etc, or, subject to receipt of 3 working hours notice, allow access to the employer to recover such items. (It is expressly agreed by the parties that failure to allow access for such purpose will generate a County Court action by the employer to recover the equivalent value of the equipment as set out in the Schedule hereto.)

j) keep the homebase decorated to a reasonable standard so that this is appropriate for the regular supervision visits and occasional customer visit. The costs of such work (since it enhances their domestic property) will be met by the employee and deemed to be included in the [weekly fee].

The homeworker hereby also undertakes that they do not know of any reason why they should not be able to work from the premises using the homebase for these purposes.

The employer agrees that it will:

a) provide suitable equipment (as set out in the attached schedule) for the homeworker to arrange installation, the costs of which (to a maximum of £X) it agrees to meet.

b) refund the cost of insuring the equipment.

c) refund the costs of additional telephone lines and internet access required for the employer's work.

d) pay the homeworker the sum of [£Z] each [week/month] for the use of the homebase.

e) extend Employer's Liability insurance to cover the homebase.

The parties agree that this agreement will last for [6 months] and thereafter it will be subject to the giving by one party to the other of not less than four clear weeks notice in writing by recorded delivery using the addresses stated in the introduction to this agreement for this purpose.

SCHEDULE

1. Duties: The duties to be carried out by the homeworker are [specify].
2. Equipment and services to be provided by the employer are: [for example: desk, chair, footstool, computer, printer, fax machine and ancillary telephone line, modem connection and telephone line, access to Internet].
3. For the purpose of insurance the value of the equipment set out in 2 immediately above is [£Y].

Signed _____

[by both parties, dated and witnessed]

Homeworkers who are employees should also have a contract of employment, and the Agreement and Contract need to be inter-related. For example, if the employment is to be terminated should the homeworking agreement come to an end, then suitable clauses need to be inserted in the agreement and the contract of employment. In this event the notice to be given under the agreement may best reflect the statutory notice periods.

Legal implications

1. If the homeworker provides their own computer (or operates a computer not linked to the employer's computer) they may need to register under the Data Protection Act and advice should be sought from the Information Commissioner.
2. Under draft EU legislation those who work away from the 'main place of work', e.g. homeworkers, will gain protection so that they will be entitled to the same employment rights and conditions as those who work (doing the same or broadly similar work) in the main place of work (the comparability principle). Those carrying out such work in their home must do so voluntarily and will be given the right to transfer their work back into the traditional workplace.
3. In the 2003 budget employers were given the right to pay their homeworkers £2 per week tax free without supporting documentation to provide recompense for the additional costs of working from home. Larger amounts can be paid tax free but only if there are supporting invoices.
4. In a court case brought by one of their own employees – Ms Tully – the Inland Revenue recently lost a case, the dual effect of which is that:
   - no business rates will be charged against people using part of their houses to work at home, provided they do not employ people to work at the house on their business and the house does not lose its 'domestic character'; and

– capital gains tax will not be sought on any 'profit' (made on selling the house) related to the proportion of the house that was used as a business.

Human Capital Management

Basis for inclusion

Commercial pressures on employers to consider and apply principles

Background

Sometime ago the UK government, through the Department for Trade and Industry, set up a Task Force to examine the manner in which UK employers could and should take a strategic approach to the development of their human assets in order to maximise their performance (and through their performance, their employees performance) and ways in which this could be reported on to their owners. Historically directors of companies have been required to report to their shareholders mainly on financial figures. However, that emphasis has been changing over the last decade.

'Although the reports of the directors are addressed to the shareholders, they are important to a wider audience, not least to employees whose interests boards have a statutory duty (under the Companies Act 1985) to take into account' (Cadbury Report on Corporate Governance.)

'Effective employee dialogue can help staff feel more involved and valued by their employer, make them better aware of the business climate in which the organisation is operating and help them to be more responsive to and better prepared for change. This in turn can benefit the business through better staff retention and lower absenteeism, increased innovation and adaptability to change. This should allow a greater ability to react to opportunities and threats, thereby ultimately enhancing a company's productivity.'

(Introduction to DTI's consultation document 'High Performance Workplaces: Informing and Consulting Employees' – the forerunner of UK

legislation which will implement the EU Directive on Informing and Consulting and require UK employers to set up WORKS COUNCILS.)

Rationale

Inherent throughout this book are suggestions and concepts that result from strongly help beliefs – evidenced by experience – that investing in employees (properly structured and consistently implemented) can reap considerable dividends. Nowhere in the world does there exist an organisation that can achieve even the simplest of its goals other than via the efforts and interactions of those that work for it. Whilst Boards of Directors have the ultimate responsibility to manage and direct, their aims can only ever be achieved via the actions of their employees. As former chief executive of ICI, Sir John Harvey Jones stated in 'Making it Happen', his best-selling management book:

'with the best will in the world and the best board in the world and the best strategic direction in the world nothing will happen unless everyone down the line understands what they are trying to achieve and gives of their best.'

The benefits that flow from employers:

- attempting where possible to deal with an organisation's human resources in a mature and adult way by a process of real and proactive communication (the 'communicaction' principle);
- recognition that those employees have other strong pressures in our modern society which may require the employer's requirements to be sublimated at times (the 'flexibility' principle);
- acceptance that most employees are rational thinking human beings with ideas and opinions of their own which can be of considerable mutual benefit to both employer and employee (the 'consultability' principle); can be considerable.

During research for a study ('New community or new slavery? The emotional division of labour'), the Work Foundation (formerly the Industrial Society) found that one in three employees stated that work was the

most important thing in their lives. For some employees, dismissal or being made redundant can equate to the trauma of divorce. For many home is a place of oppression whilst work is a place of liberation. Half of those asked stated they like their job and would carry on working even if they had enough money not to need to.

Those organisations who have actively involved their employees in more general terms to drive their businesses forward, report considerable and tangible benefits as the following selection of quotes and data indicates:

1. In an article in 'Involvement' the journal of The Involvement and Participation Association, Dr Jon White of the City Business School recorded that as a result of research carried out on a worldwide basis over 20 years the conclusion was that:

   'there was a consistent correlation between high performance and good organisational communication. This data shows that businesses benefit dramatically from good communication management – but also that (in the UK particularly) this message has fallen on deaf ears.'

2. The Economist report on 'Corporate cultures for competitive edge' argued that *'strong business performance depends upon open and free communication between all levels of an organisation'*.

3. The Institute of Directors refers to research on employee communication in its Guidelines for Board Practice. Of companies with employee communication policies, over 65% credited them with creating significant improvements in increased productivity.

4. MORI research disclosed that one in three employees felt that they could do more work without effort, but that 53% of those surveyed felt that management was more interested in giving its point of view than in listening to what employees had to say. In addition, previous research concluded that around 50% of employees were capable of performing at a level one above that at which they were performing.

5. Towers Perrin, employee benefits consultants, report that in the US research on 135 highly performing companies indicates that the management in all these companies constantly seek suggestions from frontline employees, delegate and maintain two-way communication.

   (From the author's *'Financial Reporting for Employees'* – Gee.)

The Task Force recommendations

In the past it had been suggested that companies should 'account' for their human assets by historic cost (the original cost of their recruitment and hiring), replacement cost (the projected cost of replacing them by a person with the same level of skill and experience) or by using discounted cash flows. Such suggestions have not been taken up mainly due to the deficiencies each has – the figures by themselves are hardly meaningful, let alone the problems (and cost) created in calculating such figures. It seems likely, even if the exact means cannot be currently defined, that there will be some requirement in the near future to try and assess the monetary value of these 'most valuable assets'. With such evidence the perception of employees as an increasingly valuable and valued part of the asset equation can only be strengthened. In addition, if such costs are known, it may well result in even greater efforts being made to retain good employees and help minimise the costs of their replacement.

However, the Task Force suggested that companies should provide detailed information on:

- the size and profile of the workforce;
- training and development;
- remuneration;
- career opportunities; and
- fair employment practices.

As an example we can (with appreciation of a company's permission to reproduce their report) demonstrate how these recommendations could be implemented in practice by quoting from the Cadbury Schweppes plc annual report 2003. (Chairman of Cadbury Schweppes, John Sunderland, was a member of the UK Task Force.)

Some key facts and figures

- We employ around 55,000 people in over 60 countries around the world. Over the next four years, as part of our Fuel for Growth initiative we shall be reducing our workforce by 10% through a carefully managed and consultative process.
- We have 180 people around the world in our executive management team.
- Currently women constitute 34% of our global workforce, 25% of our managers and 11% of our executive management team.
- Global staff turnover is generally low: 2%-5% per annum.
- In the UK we are recognised as an Investor in People, the national standard of good practice for managing and developing people to achieve business goals.
- We are regularly among the top 10 in the UK's 'Management Today's Most Admired Companies' report.

(The report which occupies two full pages in the Company's Annual Report goes on to give fuller details of their approach under headings including:

- Our people create and deliver our strategy
- Capitalising on the diversity of our people
- Reinforcing our reputation as an employer
- Driving performance
- Realising potential
- Communicating openly and positively
- Contributing to local communities.)

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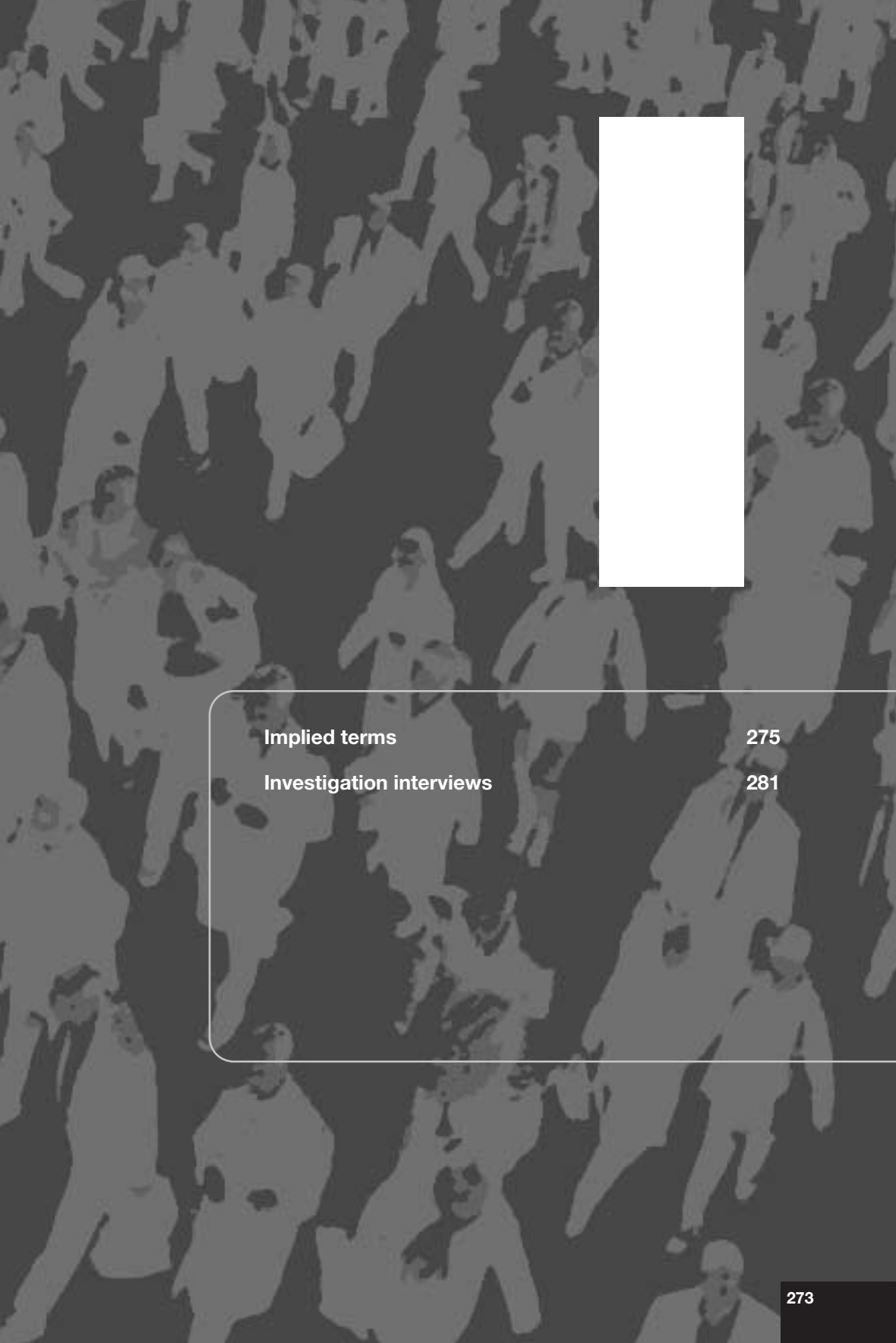

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Implied terms

Basis for inclusion

Legal obligation

Background

Even if the CONTRACT is written there are other 'implied' terms. Implied terms are factors which are, or can be, 'taken for granted' in forming and continuing a relationship such as that of employer/employee. Such terms may be 'read into' the contract by tribunals, sometimes this is the only way sense can be made of the contract.

Common implied terms

Mutual duty of care

An employer has a duty to take reasonable steps for the safety of employees. Employees also have a duty to assist the employer to maintain safe procedures and facilities, and themselves have a duty of care to other employees. Under safety law, for example the Health and Safety at Work, etc. Act 1974, there is an explicit obligation placed on the employer 'to ensure, so far as is reasonably practical, the health, safety and welfare at work of all his employees'. In the same Act, employees themselves are also obliged to take reasonable care of themselves and 'of other persons who may be affected by his acts or omissions at work'.

Fidelity

Employees are expected to act in good faith towards their employer. However, what has been accepted in the past may restrict the full impact of the application of this.

Case studies

In *Pilkington v Morey & Williams,* the employer had previously paid overnight accommodation allowances, when it knew those claiming had not stayed away. When two employees did likewise and claimed in respect of similarly non-incurred expenses, their dismissals were found to be unfair. The employees statement 'that they were confused as to the situation' was accepted as a reason for them claiming for 'expenses' which had not been incurred.

In *Adamson v B & L Cleaning Services Ltd.,* an employee who tendered for a contract which was, at the time, held by his employers and on which he worked, was held to have breached the implied term of fidelity and was fairly dismissed for doing so.

Mutual duty of respect

One party must not act in a way that damages the reputation of the other – this applies to both employee and employer.

Case study

In the case brought by the former employees against the liquidators of the Bank of Credit and Commerce International, the ex-employees successfully claimed £30 million damages because their employment prospects had been damaged by the corporate fraud of their former employer, which collapsed following widespread fraud at senior levels of the bank.

A duty not to disclose 'confidential' material

This is only effective if it can be shown that the employee knew or should have known that the item was confidential. If they were ignorant of its confidentiality, it may be difficult to reply on such an implied term in applying any sanctions. To try to clarify this situation, an employer might wish to adopt a rule that all items to be regarded as confidential should bear a description to that effect. If the requirement to respect such items is then set out in a CONFIDENTIALITY UNDERTAKING, sanctions should be effectively introduced for any breach.

Employers right to re-organise the work and the workforce

This must be tempered by both fairness and adequate consultation as it may otherwise be found to be unfair.

Case study

In *Trebor Bassett v Saxby and Boorman*, the employer tried to introduce a new shift system in its factory, the effect on weekly earnings being, as far as the two claimants were concerned, a reduction in pay of around £20 – £30. The EAT held that the failure to spell out the very serious effect that the changes would have on some employees' weekly earnings made the employer culpable.

A duty of support by the employer to managers and supervisors

An employer must ensure its supervision is not harassed, or their control undermined by employees or others. Whilst this should be self-explanatory, sometimes senior staff are bullied by their juniors. In a recent case, a deputy head teacher was bullied by his junior staff to such an extent that he suffered a nervous breakdown and his employer settled his claim out of court (without accepting liability) for £101,000.

Case study

In *Barber v Somerset County Council*, the House of Lords said that the 'overall test is still the conduct of the reasonable and prudent employer, taking positive thought for his workers in the light of what he knows or ought to know'. Although the Court of Appeal's previous advice that 'an employer is entitled to assume that his employee is up to the normal pressures of the job was sound, it had to be read as that (advice) and not having statutory force. Every case depends on its own facts'.

Employees who deal with the public can sometimes be bullied or feel threatened. In one case a council employee was awarded £67,000 for stress brought on by her being required to deal with aggressive council house tenants following her transfer into that department without training in such matters.

A duty not to change material terms of the contract unilaterally

If this is regarded as unduly restrictive because of the nature of the work, it may be possible to insert a flexibility clause into the contract. If it is then accepted by the employee (the effect having been explained to them) they may have difficulty subsequently challenging a change introduced under such authority – however, even then the change may need to be introduced with adequate notice and reasonableness (see RELOCATION), but if the other party refuses to discuss the situation it may be possible for the employer to implement such changes unilaterally.

Case study

In a multiparty case against the London Borough of Hackney the complaint was that the Borough had unfairly dismissed 550 people. Previously, in order to recruit suitable personnel, Hackney had paid over the nationally agreed rate for their jobs. Government pressure meant Hackney had to cut costs and the only method of doing so (rather than invoking compulsory redundancy or cutting services which were not permissible under the Borough's published commitments), was to remove this additional payment. They tried to negotiate but the Unions would not discuss the matter. Hence Hackney gave all those affected 13 weeks notice (i.e. a week over the statutory maximum required) to terminate their contract but stated that if, on the day after the notice expired, employees reported for work, they would be deemed to have continued their employment but on a new contract (identical in every way to the old contract but without the additional payment). The employees complained that this was unfair dismissal and breach of a statutory right (deduction from pay without authority).

It was held by a tribunal that Hackney were entitled to take the action they had. There was no 'duress' since there was nothing illegal about Hackney's actions – they were entitled to terminate the contracts.

Ultimately, if one party will not discuss the matter or there is a stalemate, the employer can bring the contract to an end fairly, providing, of course, at least the notice stated in the contract (or provided by legislation) is given.

Duty to provide work for employees

Whether there is a general duty to provide work is unclear, although if work is not provided then within each period of 3 months the employer must make payments (known as Guarantee Pay) per day for 5 days. The courts have held that, unless the contract specifies otherwise, an employer with

employees with skills they need to keep updated and used, must provide them with work when forcing them to observe a period of GARDEN LEAVE.

Non-effective terms

Whilst employees owe a duty of good faith to the employer there is no implied term that requires an obligation on an employee to report the wrong-doing of another employee.

Case studies

In *Ladbroke Racing Ltd v King*, the EAT held that a rule which advised employees that if they were told to breach a rule or condone a breach of the rules, then they would do so without the consent of the company and would not have its protection, did not amount to a duty on the employees to report such a breach. This failure to report a breach could not lead to a breach of the implied term of trust by employees who had otherwise had unblemished records.

In *Distillers Co.(Bottling Services) Ltd v Gardner*, the EAT stated that if employees are expected to report the wrongdoing of another such a term must be included in the contract – the employer cannot imply it or claimed it to be implied. (Obviously once a term is included in the contract it ceases to be 'implied' at all.)

Investigation interviews

Basis for inclusion

Commercial advisability

Background

When it is necessary to conduct an interview to discover facts affecting an event concerning an employee (e.g. for the proposed application of DISCIPLINE , CAPABILITY, counselling etc.) it is safest before making any decision to ensure a proper and full investigation of the reasons is undertaken, in order to discover the background,.

Commentary

With most investigations the ultimate aim is to attempt to find a solution – to do this, information is essential, as is keeping any meeting as informal as possible.

Suggested checklist

1. Find as many facts as possible before the meeting, including as many personal details as possible. Knowing these may aid rapport and encourage a feeling that here is someone who understands and cares.
2. Although a one-to-one meeting is helpful, this may be impractical if the two parties are of different sexes and the subject matter is personal. The intervention of any third party should not, however,

be forced on the subject who may resent it. If the subject is directly related to the sex of the employee, an interview might best be conducted by a member of the same sex.

3. Be tactful and allow plenty of time. If there is an emotional response, using recesses for short periods may be helpful.
4. Provide refreshments and allow those who wish to smoke, to do so. This may be a valuable method of relaxing smokers and a way of encouraging a discussion of the problem. If there is a site 'no smoking rule', either the discussion room should be exempt from the requirements, or the discussion should take place 'off-site'.
5. Ensure the interview is confidential and protected from unwarranted intrusion – including phone-calls.
6. Try to move to some initial solution however skeletal or capable only of implementation in stages.
7. With ongoing personal problems suggest arranging for referral to experts (for example, Samaritans, doctors, solicitors and so on).
8. Take notes of what transpires. This is particularly important where there are disciplinary matters pending.
9. Keep the employees immediate superior informed of progress.
10. Update on progress as necessary.

The process

If the interview is part of the disciplinary process the first step is to investigate the circumstances and, if applicable, hold interviews and take witness statements (see below). The person conducting the investigation must approach the process with an open mind. It is not for them to make any decision – their job is to discover all the facts or circumstances of the incident, and to lay them before others who may or may not decide to hold a disciplinary hearing. Thus, the investigator must gather all the evidence – no matter which way it seems to slant the 'case'. The investigator must not be selective – everything must be discovered and recorded. This will

entail inviting everyone to contribute no matter how unlikely it may seem that they have anything to offer.

The investigation report should contain:

i) details of the incident and/or alleged offence;

ii) a complete summary all the evidence and data discovered (which will probably be mainly contained in witness statements derived from interviews);

iii) details of any conflicting evidence;

iv) any other background information (for example, the fact that there had been previous animosity between two employees could be valuable information where the investigation followed a claim by one that the other had attacked him, or where one persons claimed version of an incident was so much at variance with the others); and

v) (if asked for) opinions or conclusions.

It may help justice being seen to be done if a copy of an investigation report of a matter subsequently the subject of disciplinary proceedings is made available to the employee under investigation.

Witness statements

It is usually helpful for statements to be taken from those who become 'involved' with an event by their proximity to it. Whilst this may seem to be a relatively straightforward task, there are a number of aspects which need to be addressed.

1. Request statements from eye witnesses and any others involved, respecting any unwillingness evinced by some employees. No pressure should be brought to bear to try to generate a witness statement. It would be extremely damaging for such pressure to be made public and the knowledge could undermine the value of the statement.

2. Statements should be taken as soon as possible after the event. Not only will this mean that evidence is being taken whilst it is still fresh in the mind of the onlooker, but also it should minimise the recollection becoming biased by pressure of colleagues and others.

3. To take a statement, a quiet and secure room must be used, with only the interviewer, witness and another note-taking member of management present. If the interviewee wishes to have someone present on their behalf this should be allowed, but they should be instructed to keep silent. Alternatively, it may be preferable to tape record the meeting in which case a verbatim record can be made later, rather than attempting to do so at the time.

4. No attempt should be made to cross-examine the witness, who should simply be asked for their recollection of the facts as the witness saw or understood them. Clarification of unclear points should be attempted but using entirely open questions, thus avoiding the possibility of accusations that words were put into the mouth of the witness.

5. The exact words of the witness (even if ungrammatical) should be used as this will tend to evidence the veracity of the statement.

6. A witness form should be used to ensure the collation of all necessary information – or for a verbatim record if a tape recording has been taken.

7. The witness should be requested to sign the form. If the witness is unwilling to do so – do not insist, but simply note this on the form and request the member of management present to initial the note of the fact and to confirm that, as far as possible, the exact words of the witness have been used and that the statement is a fair record of what was said at the meeting.

Content

In order to ensure that such statements are comprehensive, they should be checked to ensure they contain at least the following information:

Witness statement form data

1. Employers name.
2. Details (date, place, time, etc.) of incident being investigated.
3. Confirmation that this is a statement by witness giving name, occupation, etc.
4. Confirmation of names and positions of those present.
5. Reason for witness being able to see the incident.
6. Position in which witness was able to see incident.
7. Date, place and time of taking of statement.
8. Full details of what was observed, sequence of events, names of other persons present, believed facts of injury or other occurrence, etc. in witness's own words as far as possible.
9. Signature of witness or confirmation by note-taker that record is a fair version of what was said and that the witness, whilst prepared to make it, was not prepared to sign the statement, etc.

Information taken in this way to form part of a witness statement may be subject to legal disclosure requirements (that is it can be required by a claimant to be produced for the purpose of legal action). Legal advice should be taken if the content is likely to be prejudicial to one's own case – i.e. it may be a situation where it would be wiser not to ask certain questions – or even to take the statement at all (although, of course, there is nothing to stop the other side, should they be aware of the potential of the testimony, calling the witness themselves).

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Job description

Basis for inclusion

Commercial requirement. (EU proposals would require every job to be evidenced by a job description)

Background

Applicants are employed in order to carry out a range of pre-determined functions. By setting down a description of the job, supported by clear parameters as to what level of performance is needed to be attained, and gaining the agreement of both parties to the wording, this mutual agreement to content should lead to a greater understanding of what is required, and a prioritisation of tasks. It also helps make any assessment of performance more objective.

Implementation

Implementing a job description system, particularly where measures of performance are to be incorporated, can raise concerns amongst employees and must be handled carefully.

Suggested checklist

1. The timetable must allow adequate time for consultation and explanation of the principles and practice.
2. A user-friendly guide must be provided to answer all employees' questions.

3. Management briefings should be held to identify these concerns, with explanations and reassurances provided.
4. An appeal mechanism whereby disputes can be settled by an independent third party should be incorporated.
5. A pilot scheme, with draft job descriptions agreed or discussed between subjects and superiors, should be run so others can see the scheme in operation.
6. Sufficient time should be allowed for:
    a) explanation of the principles behind the system;
    b) coaching in its adoption, particularly of those who will need to compose the job descriptions;
    c) answering concerns and queries; and
    d) the results of the pilot scheme to be put into operation and difficulties identified, eradicated or overcome.
7. Decide whether additional payments for 'good performance' are to be incorporated.
8. Set up a review mechanism to assess the effectiveness of the scheme, say, a year after inception.
9. Ensure there is a procedure for updating job descriptions and instituting new measures of performance.

One person overseeing the production of all job descriptions may ensure standardisation of approach. If so, they need to conduct a communication exercise of their own to ensure adequate input from other managers and staff. A standardised format can reduce drafting/implementation problems.

EXAMPLES OF JOB DESCRIPTIONS

Title: Pharmacy assistant Grade: _____

Hours: Part-time (specify number) _____Unsocial working: YES/NO

Responsible to: Pharmacy Manager _____ _____Responsible for: Junior

PURPOSE OF JOB

Safe receipt, storage and issue of drugs and other pharmacy products to support efficient and cost-effective service, minimising wastage.

Providing assistance to the Pharmacy Manager as required.

SPECIFIC DUTIES

1. Receipt checking and storage of goods in accordance with specifications and procedures.
2. Maintenance of specified stock levels, re-ordering within preset limits when necessary from main store.
3. Preparation of departmental requisitions and recording of all issues against department code.
4. Effecting postal and alternative means deliveries to outlying customers.
5. Stock rotation in accordance with guidelines.
6. Maintenance of the 'unable to supply' record and subsequent fulfilment when stocks become available.
7. Processing returns as required by procedure.
8. Keeping stores clean, tidy and well-ordered.
9. Assisting in the preservation of the security of the store.
10. Updating and preserving the accuracy of the computerised stock system.
11. Working at all times to help provide a safe and effective service to the customers of the pharmacy.
12. Such other duties as may reasonably be required by the Pharmacy Manager.

Agreed by job holder _____ date

Agreed by manager _____ date

Knowledge, skills, attitude and experience required:

1. Sound general education and commensurate level of intelligence.
2. Willingness to learn skills and to devote attention to detail.
3. Basic computer input skills.
4. Commitment to the principles of a caring profession.
5. Ability to work alone and in accordance with written procedures rather than with personal supervision.

ORGANISATION [DEPARTMENT] Job Description

Job title: Production Controller

Job holder: [Name]

Reports to: Production Manager

Is reported to by: 1 Assistant, I Typist, 2 Clerks (Grade 3)

JOB OBJECTIVES

Plan/process the flow of work through Production Department to meet the required delivery dates

DUTIES	MEASURES OF PERFORMANCE
Ensure stock requirements are met	Stock available for planned production targets – lapses never exceed 5%)
Ensure productive capacity is fully utilised	Spare productive time is less than 10%
Issue works orders to meet Sales orders requirements	Production output is in accordance with Sales plans within 5%
Assist the computerisation of	Systems to be designed and operational by [date]
Materials Requirements Planning and Production Planning	
Train and motivate staff	Staff consistently achieve their measures of performance
Such other duties as may reasonably be requested	As agreed

Agreed by Employee _____ Date

Agreed by Employer _____ Date

SKILL LEVELS

- Education: to at least GCSE standard.
- Literacy: able to express him/herself clearly in speech and writing.
- Interpersonal skills: Ability to work with, and obtain output from a wide variety of employees, many of whom may not report directly to him/her.
- Experience: 3 years with Production supervision. Off the job training on Production Planning.
- Product knowledge: comprehensive knowledge of product list.

A number of entries in the above examples may need some explanation:

a) 'Job title' – should be accurately descriptive of the job and link with the title used in the CONTRACT but, if not, it may be helpful to describe the job.

b) 'Reports to' – the position of the immediate supervisor of the job-holder should be named here by the title of the job, rather than a name of an individual.

c) 'Job holder. is reported to by' – again the titles of those who report to the holder (e.g. Assistant Job Title) or reference to their status (e.g. 6 Grade A and 3 Grade B clerks) is used.

d) 'Job objective' – whilst this should describe the aim of the job in fairly general terms, care should be taken not to make such description too wide for the level of seniority of the job itself. Thus, in a job description for a Returns Inspector, it may be deemed correct to state that the aim of the job is 'To ensure that internally produced output and externally sourced products meet the company's pre-determined specifications and quality standards'. But this can only be so if the Inspector has the authority to negotiate with external suppliers regarding quality to ensure their compliance with the specifications. If the employee does not have this authority, then the aim might be better described as 'To monitor internally produced output and externally sourced product, etc., reporting variations to [name/position] for action'.

   Conversely, a Special Projects Coordinator with specific authority to oversee the production of one-off orders might well have as the Job Objective – 'To ensure the production of all non-standard products in accordance with agreed order delivery times'. This aim implies an authority which the person will need in order to ensure the accomplishment of the task. Only if that authority is not intended, will the aim be incorrect.

e) 'Duties' – the job must be broken down into its constituent parts. The guiding factor here should be clarity of definition and expression to such an extent that an average person picking up the job description would have a reasonable idea of the duties or tasks

involved. If tasks are required to be carried out in accordance with procedures, the procedures themselves should be referred to.

f) 'Measures of performance' – it is possible to produce a job description simply on the basis of a list of tasks without any indication of the level of performance to be achieved for each, and, certainly, a format restricted to such content would be preferable to an absence of a job description altogether, but the true value of the system may not be realised without the establishment of the criteria. If the job holder and the person reported to, agree and codify standards, guidance regarding achievement or non-achievement at an APPRAISAL interview or even separate therefrom, becomes an objective, rather than a subjective, discussion on whether output or performance has met the previously agreed levels or not. These acceptable levels exist informally for every job – the job description seeks merely to codify them.

g) 'Skill levels' – if the job requires a certain level of academic or mental achievement or manual dexterity, or indeed any other level of expertise or experience, this can be stated, and is available as part of the person specification, which will be of use in the formulation of a Vacancy specification to be used in RECRUITMENT.

h) 'Interpersonal skills' should also be identified – for example, a tactful and patient approach may be essential if dealing with the public, customers, other employees/ departments, etc.

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Keeping the team

Basis for inclusion

Commercial necessity

Background

Reworking the phrase 'the best way to make more money is to stop losing it', the easiest way to ensure we have a good team working for us is to stop losing them. In the UK we have a shrinking working population, a growing skills shortage and a tendency on the part of many employers to assume they will always be able to fill vacancies. Competition for the above average or 'best' employees is likely to become increasingly fierce.

Commentary

The Chartered Institute of Personnel and Development's (CIPD) 'Annual Labour Turnover Survey' discloses that over 50% of all recruits leave within 2 years and 75% leave within 6 years of joining.' The Hay Group's research in 'The Retention Dilemma' indicates that:

- employee turnover has increased by 25% since 1996;
- the main causes of voluntary termination of employment are a lack of leadership and a lack of a career path; and
- the cost of labour turnover can equate to 40% of an employer's annual profit.

Many personnel practitioners conclude that 50% of employees are capable of operating at one level higher than they do operate at. Whilst a proportion will not wish to move higher or take on more responsibility, this can only lead to wasted effort and an increased labour turnover.

With a shrinking workforce, labour retention can be said to be one of the major challenges for employers in the 21st Century. The secret of retention may lie in the greater and widespread creation of teams by those in charge acting more like leaders than managers. In the past, insufficient attention may have been paid to providing leadership to companies and their employees who increasingly demand greater involvement in the planning and conducting of the Organisation, and greater consultation regarding decisions etc.

To be effective as leaders, directors and managers need certain skills in dealing with those who report to them, and without whom they cannot achieve any of their aims or the aims of their Organisation. Would-be leaders should:

- listen actively;
- encourage;
- advise;
- delegate; and
- support.

Taking the initials of these five requirements, an effective director/manager creates, and LEADS a team. 'Leading' implies a far more dynamic and people-orientated role than 'managing'. Such a role is more widely sought by those who wish to be led rather than managed and it is interesting that the Hampel Committee, in its report on improving Corporate Governance, does not mention management in its definition of what creates prosperity.

Thus: *'People, teamwork, leadership, enterprise, experience and skills are what really produce prosperity. An effective Board [of directors] should lead and control the company'*.

More simply as successful entrepreneur Julian Richer states in 'The Richer Way', 'the way to succeed in business is to develop your staff'. This may mean a rethinking of priorities, particularly on the part of directors for companies used to the requirements of Company Law which requires them to put their shareholders first. But as the UK's most successful entrepreneur, Sir Richard Branson (voted the 'leaders' leader' in a June 2004 poll) states:

'For us our employees matter most. It seems common sense to me that if you start off with a happy well-motivated workforce, you're far more likely to have happy customers. And in due course the resulting profits will make shareholders happy.'

Communication is the key

Leading entails motivating and gaining the commitment of those being led. It entails real dynamic communication rather than the one-way passing of information which is often mistakenly described as communication.

'Communication – frankly the ability to listen is the rarest of characteristics – listening is all about what people don't say.' Sir John Harvey Jones' comment can be amplified by another from the same source:

'With the best will in the world and the best board in the world and the best strategic direction in the world, nothing will happen unless everyone down the line understands what they are trying to achieve and gives of their best.'

The challenge?

A quote from the CIPD's report 'Impact of People Management Practices on Business Performance' neatly summarises the challenge for the Board:

'If managers wish to influence the performance of their companies the most important area they should emphasise is the management of people. This is ironic, given that our research demonstrates that emphasis on human resource management is one of the most neglected areas of managerial practice.'

As American management guru, Stephen Covey, comments: 'management is about doing things right but leadership is about doing the right things'; whilst in his 'Seven habits for highly effective people' he suggests that:

'Management without leadership is like arranging the deckchairs on the Titanic.'

Practical means of retaining people

If there is inspiring leadership once a team has been created its members are more likely to stay together since most people wish to be associated with success, and may well regard the operation of an effective team as success in its own right. In turn this can help retain key personnel.

- Maintain the high profile and reputation of the employer – creating a situation where the employee is proud to be associated with the employer.
- Maintain a package for employees which is at least as good and possibly better than the average in the area/industry. It should make far more sense to invest the expenditure on replacing leavers by ensuring existing personnel are well-rewarded and content. Knowledge of their state of mind can only be gained by true COMMUNICATION and mutual respect.
- Adopt all the principles of leadership (see above) and make sure employees are empowered as valued team members and their views and suggestions are listened to.
- Ensure there is a structured training plan which caters for employees aspirations and business demands, and can reward those with required skills. Some people welcome having their skills and capabilities stretched.
- Allow flexibility – those companies who respect their employees private lives and pressures are more likely to retain them so others may not, and research indicates that over 70% of those asked place flexibility of hours as one of their highest requirements.
- recognise and reward special effort and performance.

Motivation

The management and motivation of staff is a continuing responsibility. Whilst setting up the principles and practice that will motivate employees is essential, so too is a commitment to continuing this approach which can be a harder task than actually starting. Most of us are attracted to 'something new' so developing a new outlook should have something going for it. When things are up and running, leaders may need to work hard to stimulate and retain attention and commitment.

1. Communicate, communicate, communicate. Unfortunately we often confuse information with communication. Information consists of giving people facts and data which they may or may not understand – it is essentially a sole directional process, does not require input from the target and does not generate any communicative process. Only if we encourage and generate feedback will we start a two-way process which, when both parties understand the viewpoint of the other, will become communication. True communication helps unleash employees' thoughts which may in turn provide a guide to managing them.
2. Prohibit demotivational forces such as unfairness, discrimination, harassment, favouritism, verbal and physical violence, bullying and perceptions of worthlessness, etc. Ensure fairness at all times.
3. Delegate. Push responsibility down as far as possible. This will leave time for managers to concentrate on managing and leading their employees (which should always be their first priority) as well as making the delegatee's job more rewarding. In delegating authority everyone must be told so they are prepared to support decisions made by the delegatee.
4. Empower and enrich the jobs of team members. To a certain extent this will result from delegation since the effect of pushing responsibility down the line of command should be to widen subordinates responsibilities. Whilst some may not welcome this, most do and respond accordingly.
5. Creation of teams. Encouraging employees themselves to work in teams harnesses the pressure of the team members to make

their team successful. This should improve output, communication and productivity. The phrase 'Together Everyone Achieves More' is a useful mnemonic to help put the concept across and to ensure it is memorised.

As five times gold medal winner Sir Stephen Redgrave and his rowing partner Matthew Pinsent state:

'For any team to reach its true potential it needs all of its individuals to communicate clearly and work together. It means understanding each other's talents and then using them to the full, and it means knowing when to bolster each other's performance to become closer, stronger and more flexible. What started as a group of individuals ends with relationships permanently strengthened by the experience.'

6. Task swapping. If there are a number of relatively straightforward, even boring jobs, training personnel so that they can periodically have a change round provides a variety of work and encourages a different approach to it. In this way, new relationships as well as new approaches may result. Indeed, it may be that someone new performing a task may see a way in which it could be improved.

7. Discussions. Team briefing, QUALITY CIRCLES, workplace forums, improvement groups, suggestion schemes, etc. can all play a part in encouraging thought about the jobs and the way they are performed, and in welding a team together. The title given may be merely a peg but the important factor is that those involved have an opportunity to discuss matters of common interest and to work together as a team.

8. Praise. In the UK we tend to criticise too often and praise too little. Yet praise is incredibly cost-effective and very motivational. Most people want recognition – even criticism may be preferable to being ignored. Few employees may have heard the phrase 'Praise me, scold me – just never ignore me', but many instinctively subscribe to the content.

9. Incentives. Recognition can not only reward the good idea but also encourage employees to think about what they are doing. Human nature is strange – sometimes a financially 'worthless' award (e.g. a shield) can have more perceived 'value' than the star prize

of, for example, a weekend in Paris. Peer recognition can be a valuable asset to the would-be motivator.

10. Extend employee ownership, particularly in companies controlled by shares. This movement has been around for many years with tax incentives encouraging the spread of the process. Even the Labour Chancellor of the Exchequer, Gordon Brown stated in 1999 that he wanted to encourage such ownership: *'Share ownership offers employees a real stake in their company. I want targeted reform, to reward long-term commitment by employees. I want to encourage the new enterprise culture of teamwork in which everyone contributes and everyone benefits from success.'*

    Research in 2001 for the Chartered Institute of Personnel and Development by Professor Freeman (Harvard and London School of Economics), found that the increase in productivity from implementing an approved profit-sharing scheme was 17%, whilst introducing a share option plan raised it by 12%.

11. Training. Being prepared to invest in employees by means of funding (or even part-funding) training for the mutual benefit of employee and employer may be a valued way of demonstrating commitment. Research indicates that in many, particularly fast-moving, industries good calibre people tend to be attracted to employers who will provide career training thus, enabling them to develop their talents.

12. Flexibility. FLEXIBLE working and a preparedness to assist employees (particularly – but perhaps not exclusively in the future – related to those entitled under the 'family friendly' legislation), should help create an ambience of a 'give and take' partnership between employer and employed. Obviously, it is necessary to check that any such flexibility is not abused. Indicating these benefits will only exist providing they are not abused should enlist peer pressure to avoid abuse.

Termination interviews

When a person leaves voluntarily they should be asked for their views on the employer – at that stage they may be very honest. At least one employer asks leavers to suggest 3 things that would make them a better employer.

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Leave

Basis for inclusion

Legal obligation

Background

Until fairly recently the number of instances in which an employer was liable to pay an employee when he was not working were few – e.g. time off to seek other work and/or be trained when redundant was virtually the only instance for many years. Since then a whole range of rights to both paid and unpaid leave have been introduced.

Holidays

All employees are entitled to receive 4 weeks paid holiday within their employers holiday year. This statutory holiday must be taken within the holiday year to which it relates and can neither be carried forward, nor be paid in lieu (except where the employees leaves during the holiday year with unused entitlement). Statutory holiday can be offset against paid contractual holiday to which an employee is entitled.

Sickness

Subject to the production of an acceptable self-certificate for the first seven days (and the production of certificates from a medical practitioner for periods in excess), employers are responsible for paying Statutory Sick

Pay for an employee's first 28 weeks sickness (within each year). Only the smallest employers can claim a refund from the State relating to the amounts paid.

It can be confusing to discern rights and responsibilities when an employee claims to have been sick whilst on holiday. It is important to make it clear in contract documentation that if a person falls sick when on holiday:

a) they must get a certificate from a recognised medical practitioner

b) their holiday is suspended for the period of sickness. Amounts already paid in respect of the holiday will need to be recovered – but offset by any SSP and occupational sickness benefit (if applicable)

c) the amount of holiday during the sickness should be added to the amount still to be taken.

Public service

Where an employee is required to attend the following public events, employers are required to grant leave although not necessarily paid leave: jury service, military leave, duties as local councillor, governor of school, public appointments (e.g. member of a statutory or water authority), witness etc. Where an employee wishes to serve as a magistrate the right is specifically granted under legislation, namely the Employment Rights Act 1996. That Act sets out the reasonableness test but also requires employers to take into account any leave already given for Trade Union activities, and the effect on the employer's business of the employee taking the amount of leave they wish.

Case study

In *Riley-Williams v Argos Ltd,* Ms Riley-Williams worked in an administrative position which could only be covered by one other person. She was appointed a magistrate and applied for 13 days (unpaid) leave for her duties as a magistrate (there is a requirement from the Lord Chancellor's dept that magistrates should sit for a minimum of 26 half days each year).

Argos had no public leave policy and instead used its 'compassionate leave' policy as a criteria. Under this policy an employee could have 5 days unpaid leave for compassionate purposes. Argos stated they would allow her a similar amount of unpaid leave and the other 8 days she would need to take as part of her holiday entitlement.

Ms Riley-Williams resigned claiming unfair constructive dismissal. An Employment Tribunal found that it was not unreasonable for the employer to require her to take 8 days of the commitment as holiday.

She appealed to the Employment Appeal Tribunal who amongst other comments stated that the ET should have taken into account (as the statute requires) whether she was also taking time off for Trade Union activities. Since they did not but accepted the employer's referral to the amount of 'compassionate leave' (which is not something required to be taken into account under the statute) the decision that it was not an unfair decision was overturned and the matter was referred to a different tribunal to re-hear the whole case.

The EAT comments regarding the calculation of a reasonable amount of time off are pertinent:

a) Some employers pay for such leave.

b) Some employers allow the whole of such leave either on a paid, unpaid or as a combination of the two.

c) The *'absence of any policy by [Argos] to deal with applications for time off under the statute [for this purpose] has caused his litigation to be conducted. We would urge employers . to put in place policies for time off for public duties.'*

Draft policy

(Note: The 'entitlements' referred to are for example only. It should not be inferred that such an arrangement will satisfy the requirement.)

1. This Organisation supports those employees who wish to undertake public duties.
2. Reasonable amounts of time off will be allowed to undertake such duties.
3. In calculating what is a reasonable amount the needs of the business must be taken into account particularly whether the duties undertaken by the person requesting the leave can be undertaken by more than at least one other person whilst the public duties are undertaken, and whether the person is already taking leave for other such purposes.
4. In order to support persons undertaking such duties the Organisation will make payment for [50% of the time taken] and expect the remainder to be taken either as unpaid leave of absence or as paid holiday from the employees annual entitlement.
5. Alternatively, if the person taking public leave wishes, credit could be given for additional hours worked at other times which could be regarded as 'paying' for any unpaid amount of time off.
6. Application for public duty leave should be made to [specify name] who will review the position in the light of the forgoing and decide whether there are any extenuating circumstances that might justify additional unpaid leave.
7. If a person is unhappy with the decision they have the right to exercise a right of appeal using the Grievance procedure.

Redundancy

If made redundant, an employee is entitled to reasonable paid leave to seek other work and/or to be trained for alternative work. What is reasonable will depend on the age, skills, location, length of employment of the subject employee.

Parental responsibility

a) Maternity

All expectant mothers are, subject to the production of a card evidencing their appointments, entitled to paid leave to attend ante-natal medical consultations and to ordinary maternity leave of 26 weeks unpaid leave. If a woman has 40 weeks service as at her Expected Week of Childbirth (EWC) she is entitled to ordinary maternity leave (26 weeks) during which she will be paid for 6 weeks at 90% of her average earnings, plus a further 20 weeks at the lower of 90% of her average earnings or £102.80 (April 2004), plus a further 26 weeks unpaid additional maternity leave.

Some employers allow more than the statutory requirement for maternity pay but care needs to be taken with the arrangements for such breaks.

Case study

In *Curr v Marks & Spencer plc*, when Ms Curr ceased working because of pregnancy, the company suggested she take a career break during which she could work for two weeks a year to keep herself familiarised with work and changes etc. She agreed and was given a P45. After four years she returned to work for her employer but a few years later was made redundant with redundancy pay calculated only on her second period of service. It was held that her employment had been terminated at the start of the career break. The Court of Appeal recommended that rules covering such breaks should be made very clear and that their full effect should be explained to employees.

Both annual and maternity leaves are statutory rights. In the case of Merino Gomez the ECJ stated that a woman must be able to take holiday outside her maternity leave. If her contract requires her to be paid for bank holidays (and there is no legal right to payment for bank holidays; the employer must simply pay for 4 weeks holiday in its holiday year) and one or more bank holidays falls within the 6 week Ordinary Maternity Leave (OML) period it would appear that these holidays should be held over until later. In the remaining period of her OML she is entitled to her contractual holiday and during the whole of any Additional Maternity Leave (AML) she is entitled to her statutory holiday entitlement (and for any additional holiday if allowed by the contract). Either her holiday should be added to the end of her AML (see above ruling) or, since AML is unpaid, she might decide to take her outstanding (paid) holiday as part of this (unpaid) maternity leave.

WARNING: Under the Working Time (WT) regulations if an employee has not taken their statutory holiday (4 weeks) within the employers holiday year they lose it. The ruling in the Merino Gomez case seems to conflict with this requirement.

b) Paternity

Fathers with 40 weeks service prior to the EWC can claim 1 or 2 weeks paternity leave and pay at the lower of £102.80 or 90% of average pay. Consideration is being given to extending this amount of leave to 26 weeks unpaid leave where the subjects partner wishes to return to work (in other words the father would have the right to the equivalent of the ordinary maternity leave).

c) Adoption

Adoptive parents with 26 weeks service at the date of adoption have entitlements. The 'main' parent is entitled to 26 weeks paid leave (the lower of £102.80 (April 2004) per week or 90% of average earnings). The other parent is entitled to one or two weeks leave at the same rate.

d) Parental

Subject to the employee parents having a year's service in each case:

- Natural parents. Employees are entitled to 13 weeks leave (unpaid) until their child's 5th birthday. A maximum of 4 weeks can be taken each year. A sole day taken counts as a week.
- Natural parents (disabled child). Employees are entitled to 18 weeks unpaid leave until the child's 18th birthday. A maximum of 4 weeks can be taken in any one year. A sole day taken counts as a sole day.
- Adoptive parents. Employees are entitled to 18 weeks unpaid leave during the 5 years from adoption or until the child's 18th birthday whichever occurs sooner. A maximum of 4 weeks can be taken in any one year. A sole day counts as a week.

e) Family emergency leave

All employees, regardless of service and from their first day of employment, are entitled to a reasonable amount (probably only one or two days) unpaid leave for 'family emergencies'. (See EMERGENCY LEAVE.)

Training

a) 16-17 year old employees who have not attained academic or vocational standards at school and who wish to try and attain those standards by following a recognised course of study must be given reasonable amounts of paid time off to attend such courses. If the course runs past their 18th birthday the time off must be granted until it ends.(See TRAINING.)

b) Union Learning Representatives must be given reasonable amounts of paid time off to carry out their duties.

Elected representatives

Those elected by their colleagues for the purposes of consultation in Redundancy, Transfer of Undertakings, Safety, Pensions, Working Time arrangements and Works Councils must be given reasonable amounts of paid time off to carry out such duties.

Footnote

For a variety of other reasons, to assist volunteer firefighters, lifeboat personnel, special constables etc., some employers provide paid leave usually as a contractual, rather than a legal, right.

Loans

Basis for inclusion

Potential 'benefit'

Background

Whilst the majority of employers avoid granting loans to their employees, many will be asked at some time or another to assist employees. The rules regarding the granting of authority, as well as the purposes for which loans will be granted, need to be carefully laid down and controlled.

Commentary

As far as ad hoc loans are concerned, some employers may prefer not to advertise the fact that the Organisation is prepared to assist, fearing this could encourage additional applications. Ideally, this type of loan should be the exception. In addition to ad hoc loans, an increasing number of employers make loans to assist employees with travel costs – e.g. season ticket loans. These would normally be dealt with in a far less investigative manner, although a repayment authority, such as that set out below should be completed in each case.

Example of policy

1. Whilst [the employer] believes that employees can and should manage their personal finances successfully, it recognises that at times short-term financial help may be necessary. It will sympathetically consider loan applications to [maximum sum] from staff

with at least two years service. These arrangements are in addition to the assistance in respect of the 'week in hand' arrangements as set out in 3 below.

2. Loans may only be approved by [name] after submission of a written application and completion of a loan repayment authority. All loans must be repaid by deduction from wages or salary, with any outstanding amount due on or before an employee leaves service. The loan repayment authority grants power to the employer to deduct loan repayments from wages and any balance outstanding from monies due, re wages, holiday pay, etc., should an employee leave.

3. Where a new recruit is required to work two weeks before receiving their first weeks wages (i.e. the 'week in hand' arrangement), on application, they may be granted a loan of up to 60% of the gross amount of the first week's wages at the end of the first week. This advance will be recovered by two equal deductions from the first two wage payments made. Other than in these circumstances loans will only be granted to employees with two years or more service.

4. Loans will be granted in respect of pressing family or personnel circumstances but will not be entertained in respect of non-essential expenditure, for example, a new car, holiday (unless in the aftermath of a lengthy illness), etc. [Name] will have the authority to decide whether a loan qualifies under this policy and their decision will be final.

5. In the event of a loan being granted, a copy of this policy will be given to the employee and in signing the loan repayment authority, they will be acknowledging receipt of this policy.

Repayment authority

With the legal prohibitions on employers making DEDUCTIONS from wages, it is essential that a loan repayment authority form is completed. The following draft allows considerable flexibility concerning the way in which the loan can be recovered and needs to be customised for particular circumstances. It is important that the employer has authority to enable the deductions to be made **from wages**.

Name _____

Dept _____

Ref. No. _____

Date _____

I, [name] acknowledge receipt of the sum of £ [words] being a loan made to me by [employer] for the purposes of [set out details]. I undertake to repay this on the following basis:

- by deduction from wages from week commencing [date] of an amount of [£] as Authorised by my completion of this form *
- by deduction from the week-in-hand wages you will owe me on the date of my leaving your employ *
- (other – specify) *
- by immediate repayment of any balance outstanding should I leave your employ on or before my last day of work for you. In this regard I authorise you to deduct any such amount from the monies that would then be due to me and undertake to reimburse you with any amount remaining outstanding before leaving your employ. *

I acknowledge that this loan is due to you and recoverable by you in the event that I fail to repay it in accordance with the above undertaking.

Signed _____

* Delete as applicable

Signing such a form allows the employer to recover the amount in installments. However, where a loan repayment period spans wages increase(s) the suggestion(s) that having increased income, the employee might wish to increase the repayments to liquidate the loan could be made. In such circumstances a fresh authority should be sought – either using the above draft or a simple memo.

TO [EMPLOYER]

RE LOAN

Please increase the repayments you are deducting from my salary from [sum] to [sum] with effect from the first payment of my salary at the new rate of [sum] I confirm that the existing arrangements regarding recovery of any balance due should I leave your employ remain unaltered.

Signed _____

Training loans

A number of employers concerned at the high cost of training, now require their employees undergoing such training to agree to repay the whole or part of such training costs either during employment or, more specifically, should they leave their employ within a specified period after the completion of the training. There is little difference between recovering such expenditure and recovery of a loan – an appropriately worded authorisation is needed. Here, however, the important facet is not so much to agree repayment during employment but to ensure the situation regarding repayment at or after termination of employment must also be clear.

Case study

In *Potter v Hunt Contracts Ltd,* although the employee had agreed to repay the costs of training by deduction from wages, no such authority was given to withhold any sum from amounts due on his resignation. A month after being trained at a cost of £545 and owing £523, the employee left. The EAT held that the deduction of such an amount from the amount of wages owed to the employee as at the date of termination of employment was unauthorised.

There is a further danger to the employer in making an illegal deduction since once it has been so classified the employer is barred from making recovery in any other way (that is through the Courts).

Reducing debt

Although some employers require employees to finance the training costs during employment, on the basis that the training has benefited the person as much as, or more than, the employer, most tend to concentrate on recovery should the employee leave and recognising that the value of the training has either been gained by the employer or has less value with the passing of time, a reducing percentage for recovery over time may be appropriate.

DRAFT UNDERTAKING

I, being an employee of [employer] hereby undertake that in consideration of the employer financing my training with [details] at a cost of [amount] that should I leave the service of [the employer] within the times stated below, I will repay the proportion of the costs of such training also stated below:

- If I leave in less than 6 months I will repay 75% of the above figure.
- If I leave in more than 6 months but less than 12, I will repay 50% of the above figure.
- If I leave in more than 12 months but less than 24 I will repay 25% of the above figure.

I also hereby grant authority to [the employer] that in the event that I have not paid the amount due before leaving employment, [the employer] may deduct the amount due from any monies due to me in respect of wages, holiday pay, etc., on termination. I undertake to pay [the employer] any balance left outstanding after such deductions have been made, before such termination.

Signed _____

Graduate loans

During their period of study many graduates are entitled to State loans to assist with living expenses. These loans are repayable to the State but not until the salary received by the graduate reaches or exceeds £10,000 per annum.

Granting increases to graduates just below this salary threshold needs to be carefully considered to avoid any incentive generated by the receipt of an increase, only marginally above the threshold, being more than eradicated by the need to make deductions in respect of the loan repayment. The manner by which the individual loan can be collected needs to be examined and complied with. There are currently discussions concerning the recovery of tuition fees from graduates which again, may be a task placed upon the employer, subject to salary levels being reached by the employee.

Normally the employer will wish to collect by deduction from salary in which case the employee must complete a DEDUCTION authority.

WARNING: It can be counter-productive to grant a loan at such a level that the employee cannot move on because the outstanding amount required to be repaid on termination is too great to be funded. This effectively imprisons the employee which can create resentment. It can also act as a deterrent to the employer wishing to terminate (although they at least have the right to vary repayment or even waive it).

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Maternity rights

Basis for inclusion

Legal obligations

Background

Female employees are entitled to a range of rights before and after giving birth. Close attention to the rules is needed since breach could generate a claim for sex discrimination.

Leave and pay: evidence

A woman must produce form MATB1 to her employer. This form is available from the 20th week before her EWC (Expected Week of Childbirth). A woman wishing to exercise her entitlements must notify her employer in or by the 15th week before her EWC, giving the employer a copy of the MATB1 if the employer requires this.

She must also state to her employer when she wishes her maternity leave (and her Maternity Pay – if she is eligible) to commence. She must give 28 days notice of the leave/pay start date. Within a further 28 days her employer must confirm to her, in writing, her rights to:

i) pay;

ii) preservation of contract; and

iii) return (see below).

If the baby is born before the expiry of the woman's 28 day notice period the leave (and pay if applicable) commences at the date of birth.

ALL women are entitled to 26 weeks ordinary leave, but ONLY women who have 26 weeks service as at the end of the 15th week before their EWC (i .e. a total of 40 weeks service before the EWC) are entitled to an additional 26 weeks (unpaid) leave, making a total of 52 weeks.

Provided a woman has 26 weeks service as at 15 weeks before her EWC and has earned at a rate of at least the Lower Earnings Level (LEL) for 8 weeks, she is entitled to Maternity Pay as follows:

- for the first 6 weeks of her leave she is entitled to 90% of her earnings (averaged over the 8 week period before the 15th week before her EWC).
- for the remainder of her ordinary leave she is entitled to £102.80 (April 2004) per week or 90% of her average earnings, whichever is less.

The additional maternity leave of 26 weeks leave is unpaid.

Note: Ordinary maternity leave and payment of SMP can be taken from the beginning of the 11th week before the EWC. If a woman is absent with a pregnancy related illness during this period then her ordinary maternity leave starts immediately.

Case study

In *Alabaster v Woolwich Building Society,* Ms Alabaster won a case (at the European Court of Justice) which means that where there is a pay rise after a woman's uncapped maternity pay (for the first six weeks of her ordinary maternity leave) has been calculated the amount paid must be recalculated and paid.

Both annual and maternity leaves are statutory rights. In the case of Merino Gomez the ECJ stated that a woman must be able to take holiday outside her maternity leave. If her contract requires her to be paid for bank holidays (and there is no legal right to payment for bank holidays; the employer must simply pay for 4 weeks holiday in its holiday year) and one or more bank holidays falls within the 6 week Ordinary Maternity Leave (OML) period it would appear that these holidays should be held over until later. In the remaining period of her OML she is entitled to her contractual holiday and during the whole of any Additional Maternity Leave (AML) she is entitled to her statutory holiday entitlement (and for any additional holiday if allowed by the contract). Either her holiday should be added to the end of her AML (see above ruling) or, since AML is unpaid, she might decide to take her outstanding (paid) holiday as part of this (unpaid) maternity leave.

WARNING: Under the Working Time (WT) regulations if an employee has not taken their statutory holiday (4 weeks) within the employers holiday year they lose it. The ruling in the Merino Gomez case might cause a conflict with the requirements of the WT regulations.

Recovery of payments

92% of the Statutory Maternity payments made to a women during her maternity leave are recoverable by 'large' employers by deduction from their NI contributions. (A 'large' employer is regarded as any employer whose total National Insurance liability for the previous tax year was £45,000 or more.) Other, 'small', employers can reclaim the whole amount plus a 4.5% 'admin' charge. If a small employer would find it difficult to fund the SMP they can apply for an advance.

Return

A woman must give 28 days notice of the date that she wishes her maternity leave to start. Her employer must (within 28 days of that notification) state the latest date by which she must return to work. She may change the leave 'start date', and, if so, within 28 days of the notification of the change the employer must advise a new 'return date'.

The employer will always KNOW her required date of return since:

- if the woman has insufficient service to qualify for additional leave her 'return date' is 26 weeks after she starts her leave.
- if the woman has 40 weeks service before her EWC (i .e. 26 weeks by the end of the 15th week before the EWC) then she is entitled to an additional period of 26 weeks leave and thus her 'return date' is 52 weeks after she starts her leave.

The employer can therefore state the 'return date' with certainty – although if the baby is born before the notified start, obviously this will bring the end of the ordinary leave and, if applicable, any additional leave, forward.

An employer has no right to ask the employee if and when she wishes to return, but if she wishes to return BEFORE her 'return date' she must give her employer 28 days notice and her employer can postpone her return for any period – but not to a date later than her 'return date'. Otherwise the woman can simply arrive for work on her 'return date' – she does not have to give any notification, although in practical terms this would be advisable.

Contract terms

Her contract continues during maternity leave and thus any rights other than pay (e.g. holiday) continue to accrue. Thus, a woman on maternity leave for 52 weeks could have a full year's holiday entitlement (plus or including Public Holidays if paid) which she should take (and be paid for) during that leave.

Case study

In *Visa International Service Assn. v Paul* it was held that it was discriminatory for an employer not to inform a woman of a job opportunity whilst she was on maternity leave – even though she would probably have been unsuitable for the job.

Failing to allow a pregnant woman to attend a training course for which she had been selected previously and which could have led to her promotion was held to be discrimination in *Ministry of Defence v Williams*.

Job on return

A woman entitled to the ordinary leave has a right to return to the job she was doing before her leave. But a woman entitled to the additional leave has a right to return to a similar job (on no less favourable terms) but not necessarily the job she left. Some women may wish to work part-time etc. on return. Women with children up to age 6 (18 if the child is disabled) are entitled to request their employer to consider a request to work flexibly – and to have such a request considered objectively.

Case study

In *Sibley v The Girls Day School Trust, Norwich High School for Girls,* Ms Sibley wished to return to work part-time after giving birth. She was a form tutor and her employer stated that this could not be done on a part-time basis. Her claim for sex discrimination was rejected.

Failure to return

If a woman fails to return on the due date, this should be carefully investigated before any action is taken. If she is sick she should be treated in exactly the same way as any other sick employee (that is, asked for certification etc.). If she is not sick then the matter may need to be dealt with under the employer's disciplinary procedure.

Working during maternity leave

It is possible for a woman to claim maternity pay from one employer whilst continuing to work for another, but she cannot claim payment from any work for the same employer.

Leaver

If a woman leaves employment (irrespective of reason) after her qualifying week (15 weeks before her EWC) she is still entitled to be paid her statutory maternity pay.

Second baby

If the woman becomes pregnant during her additional leave she will be entitled to a further 26 weeks ordinary leave but NOT any additional leave (because she had not returned to work after the first birth). If she has returned to work and works for at least 8 weeks for a wage/salary at or higher than the Lower Earnings Level and then finds she is pregnant the whole process is repeated.

Coverage

Provided an employee has the required service (and has earned at the required rate) she will be entitled to these rights irrespective of hours worked, casual status etc.

Compulsory leave

Under the Maternity (Compulsory Leave) Regulations 1994 SI No 2479, an employee who is entitled to maternity leave must not work (or be permitted to work by her employer) for 2 weeks (4 weeks if she works in a factory) commencing with the date of childbirth. An employer who breaches this requirement (i.e. who allows the employee to work within 14 days of childbirth) can be fined up to a maximum of £500. This leave is entitled 'compulsory maternity leave'.

Pension membership

Pension schemes are required to treat female members who are absent from work due to pregnancy or confinement and are in receipt of maternity pay, as if they were working normally and receiving the remuneration they would be likely to be paid for so doing. This needs to be taken into account when calculating continuity of membership, as well as rights and benefits to which they are entitled. In addition, members of either sex who are off work for family reasons must also be treated as if they were working normally, although in such cases the actual wages paid will be used as the relevant figure for calculating benefits.

Antenatal leave

Under the Employment Act 1980 all pregnant employees have rights to reasonable time off with pay to attend ante-natal clinics on (if required) production to their employers of an appointment card. No card is required for the first appointment.

Risk assessment

Under the Management of Health and Safety at Work (Amendment) Regulations 1994, employers are required in anticipation of a woman of child-bearing age entering their employ to carry out a pregnancy risk assessment.

Case study

In *Day v T. Pickles Farms Ltd* the EAT stated that if an employer fails to assess the risks to a pregnant woman in the workplace (or even fails to carry out such an assessment in the anticipation of a woman of child bearing age entering their employ), this amounts to a detriment within the meaning of the Sex Discrimination Act 1975 and thus the employer could become liable for discrimination penalties.

The risk assessment process (which covers those who have recently given birth and are breastfeeding, as well as pregnant women) requires employers:

a) to assess all risks to which such employees might be exposed;

b) to ensure they are not exposed to those risks; and

c) if a risk remains despite preventative and other actions, terms of work (hours, place, etc.), to offer such employees alternative work or grant them paid leave if this is not available.

Detailed guidance can be found in the Health & Safety Executive's guidance booklet 'New and Expectant Mothers at Work: A Guide for Employers'.*

('New mothers' are defined as women who have given birth within the previous 6 months.)*

The Equal Opportunities Commission recently noted that in 2001 there were 1,387 maternity related discrimination claims regarding breaches of Health and Safety legislation (96% of the discrimination claims). The average compensation claim paid was £9,871.

The HSE identify 5 general risks that there are to pregnant women in the workplace, but these should be taken as guidance only since each risk assessment of each workplace will inevitably be different. In addition, each employer should identify the particular risks related to their own operation.

1. Working with unhealthy substances

Perhaps the most widely encountered substance with which a pregnant woman and new mother might come into contact is lead. Any use of lead should be identified and women of child bearing age prohibited from working anywhere near its use or handling products which have been in contact with lead. (Similar restrictions apply to a range of other substances – e.g. radio-active material.)

Note: Under the Control of Asbestos at Work Regulations, those who occupy buildings, as well as those who own them, have an obligation to identify, record, monitor and assess the risks from asbestos in their building.

2. Violent or stressful environments

What some people find acceptable, other may find stressful – e.g. some people can stand loud music, others cannot. The environments within which people work should be assessed and those working in areas felt to be potentially stressful should be specially advised, and if and when a woman states she is pregnant she should be asked if she wishes to transfer elsewhere.

The situation of a pregnant or new mother working within an environment which is 'rough' or 'tough' or in any way violent, needs to be assessed very carefully, with specific guidance depending on individual problems and risks.

3. Lifting

Employees are generally prohibited from lifting loads heavier than around 55lbs without manual or mechanical assistance. However, applying this weight restriction could be unwise for many pregnant women and a more realistic maximum load is perhaps 4 kilos or 10lb. The volume of a package is also important since a light weight but bulky object might pose considerably greater danger than a small but heavier item.

4. Confined working space

The simple increase in body size due to pregnancy, can create problems of its own if the working environment is at all confined or small, or there is a restricted access etc. Such items should be identified. If it is impossible to change them, the possibility of the woman working elsewhere should be considered.

5. Using an unsuitable workstation

Where the woman is using a visual display unit, the ergonomic arrangement of such equipment may often leave much to be desired. Whilst this may be acceptable in the ordinary course, there may be specific dangers to a pregnant woman whose condition requires attention to posture etc.

Those using VDUs should:

- have a comfortable, adjustable chair – with good back support;
- a desk surface which allows them to position the VDU at least 10 inches from their head and provides sufficient space for other working papers;
- have a monitor which is not situated so that it creates a reflection or glare, and generates minimal radiation;
- keep the screen clean and adjust brightness and contrast to create a good working light;

- take regular rests (not necessarily from work but from the VDU work) and allow the eyes to refocus on a more distant subject than the VDU screen;
- sit so that the wrists are parallel with the keyboard, 'float above it', and can rest on a support regularly;
- place the feet either on the floor or on a raked footstool to remove strain from the back, thighs should be parallel with the floor; and
- either the user should face any window or natural light should be capable of being filtered with blinds or curtains.

Procedure

1. Accompanied by a pregnant woman (or a woman who has given birth) tour the whole area where a pregnant woman/new mother might work – identify all risks.
2. Consider whether any risks can be removed or minimised and, if so, implement changes to effect this.
3. List risks which cannot be removed and/or minimised on a written risk assessment.
4. Immediately a woman indicates she is pregnant, give her a copy of the risk assessment (possibly walking round and identifying the risks with her).
5. Invite the woman to advise the employer if she notes any additional risks so that the risk assessment can be updated.
6. Regularly review and update the risk assessment.

Action

If there are serious risks, during the time she continues working, a pregnant woman has a right to have the risks removed from her normal place of work. If this is impossible then she can carry out her work elsewhere where there are no risks. If this is impossible then she can be asked to work on other tasks (without any detriment regarding salient features of

her contract – hours, pay, benefits etc.). If there is no work she can undertake she has the right to be suspended on full pay until such time as her maternity leave commences.

** HSE Books telephone 0178 881165 or website www.hsebooks.co.uk*

Case study

In *Hardman v Mallon (t/a) Orchard Lodge Nursing Home,* Mrs Hardman was a care assistant – a job which required a certain amount of patient lifting or supporting. When she became pregnant and informed her employer of that fact, she attended a meeting which discussed the need for a risk assessment, although one was not carried out. Her employer's only action was to offer her alternative work as a cleaner. She refused and obtained certification that she should refrain from heavy lifting. Another meeting ensued where the employer again offered the cleaning job – which she again refused. She complained of sex discrimination and the EAT found that because:

- she had suffered less favourable treatment, the cause of which was her pregnancy,
- the employer had breached the law by not conducting a risk assessment as set out in *Day v T Pickles Farms Ltd* which was a detriment on her.

Mrs Hardman had suffered sex discrimination (for which of course there is no upper limit on compensation).

Medical records

Basis for inclusion

Legal obligations

Background

Traditionally there has been no requirement to allow employees to see the records that the employer generates concerning them – although this has been changed by the passing of the DATA PROTECTION Act 1998. However, for some time legislation has governed the provision of medical records and reports, and grants to employees rights of access to them.

Access to Medical Reports Act 1988

This Act primarily covers reports originated prior to employment – for example, where an employer asks a prospective employee to undergo a medical examination. A person has a right of access to any medical report concerning him which is prepared by his own doctor. If the subject requests access to the report then the doctor may not send the report to the company for 21 days which gives time for the subject to inspect the report. If the subject disagrees with anything in the report then (s)he has a right to request alteration or, should the doctor refuse, to attach their objections or alterations to the report. The subject can also refuse to allow the report to be sent to their employer. The doctor can refuse access if it is felt that disclosure would seriously affect the well-being of the subject or access should be restricted to certain parts only of the report.

Where a report is prepared by a doctor who is retained by the employer, the employer has no right of access, although if this report then became part of the employee's personnel records they might then have rights of access because they have a right of access to such records under the Data Protection Act.

Access to Medical Records Act 1990

This Act covers ongoing records held by the employer primarily during employment and covers all records (whether generated by the employee's own doctor or one retained by the employer). Employees have a right of access to these medical records concerning them and their access to such records may only be restricted where the doctor feels that the physical or mental state of the subject could be affected by knowledge of the content (although in practice many employers might consider that stating this as a reason for denying access could result in a worse situation that disclosing the content of the report).

Data Protection code

The Information Commissioner published a draft code of practice concerning medical records in early 2004. It recommends:

- there should be a clear policy covering medical testing;
- applicants should have to undergo medical examination only if they are likely to be appointed;
- examinations should take place only if it is a 'necessary and justified' measure;
- nothing should be done covertly or use data for another purpose than that originally stated; and
- data no longer relevant for the purposes taken should be destroyed.

Military service

Basis for inclusion

Legal obligations

Background

Employees who are called up for active service in the Armed Forces, under the Reserve Forces (Safeguard of Employment) Act 1985, are entitled to resume their employment on their return – effectively their contract continues during their service.

Obligations

Most employees protected by the law covered by this section are volunteers. However, recently whenever there has been a need to use such volunteers, their participation in active service has been made compulsory by the State so that it is clear that their rights are protected under the above Act. There is no obligation on the employer to pay for the time away from work – the reservist will be paid by the State during that period.

On returning from service, a reservist must re-apply to his or her employer in writing by the third Monday after the end of the service, giving a date within the period ending with the sixth Monday after the end of the service for return to their previous job.

The reservist must be taken back on terms no less favourable than those on which (s)he was previously employed – with credit for any improvements, e.g. increased remuneration, profit share etc., made during their absence.

Entitlement

A reservist with 52 weeks service before call up, must be employed for at least 52 weeks after their return.

Reservists with 13 but less than 52 weeks must be employed for 26 weeks after their return.

Reservists with less than 13 weeks service, must be employed for 13 weeks after their return.

Continuity of employment is assured for reservists re-engaged within 6 months of the end of their military service.

Liability

Should the employer not comply with the above requirements, the reservist (irrespective of the length of their employment) has the right to appeal to a Tribunal for recovery of the wages due to them.

Case study

In *Slaven v Thermo Engineers Ltd*, when the employee with over 13 weeks service returned from the Gulf War and was made redundant within 9 weeks, his employers had to pay him wages for the balance of the 26 weeks employment he was denied.

Even though those on the reserve list may volunteer for service and thus not qualify for the above payments, it is now customary for them to be subsequently conscripted, thus entitling them to the benefits.

Recent developments

An increasing number of employees are members of the High Readiness Reserves – a force which provides peace-keeping, humanitarian and disaster relief services using two categories of reservists. Volunteers with special skills accept, with the consent of their employers, a liability to be called out (often at short notice) to provide such services, whereas Sponsored Reserves undertake support services. Whilst such employees are on-call, the MoD provides funds to enable employers to recruit temporary staff, and the ministry also tops up military pay to the employees normal pay whilst they are on service. Both employers and employees have a right to veto and/or defer the call out.

From 1st April 2004, those who join the Volunteer Reserve Force are required to notify their employers of their membership of such Force.

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National minimum wage

Basis for inclusion

Legal obligation

Background

Until the early 1990s, wage rates for many industries were set by industry-specific Wages Councils most of which have been abolished. The introduction of a National Minimum Wage (NMW) returns employers to the type of controls set out above but with one marked difference. Wages Councils operated within each industry and could reflect the terms of business of those industries. The NMW applies across the UK and has severe implications in industries which operate on low margins. It also ignores the lower cost of living in parts of the UK.

Implementation

The NMW is currently £4.85 per hour (October 2004) and is reviewed annually. This rate paid cannot be varied on any basis (e.g. area, region, business size, occupation) except age (as set out below). No doubt the rate will continue to rise but no commitment (e.g. to link it with the Retail Price Index or any other index) has been given. There is no requirement to pay NMW when the worker is taking part in industrial action – this is regarded as absence. Homeworkers must be paid at least the NMW.

Coverage

The full rate applies to all workers aged 25 or over. Young workers (i.e. those aged 18-21) must be paid £4.10 (October 2004). Accredited trainees aged 22 or over, must also be paid £4.10 (October 2004) for the first 6 months of a new job with a new employer. Rates for those aged under 25 can be set by the Secretary of State. Homeworkers and agency workers are also subject to NMW requirements. Those working for more than one employer have the right to be paid NMW in respect of each employment. From October 2004, employers have been required to pay 16 and 17 year olds the NMW at a rate of £3 per hour.

Hours covered

All hours on 'employer's business' must be covered – thus, although workers have no right to be paid for travel to and from their place of work, if they are asked to travel elsewhere – e.g. for a training course, or to visit a customer – these hours would need to be added to normal working hours and at least an average of the NMW rate applicable paid for all hours. This even covers hours when the worker is not actually working.

Case study

The ECJ ruled in the case of *Landeshaupstadt Kiel v Jaeer* that time spent by a doctor asleep or resting but on call in a hospital was working time and thus, had to be paid for. This ruling follows a number of similar decisions in the UK. It means that not only must the hours count towards the 48 hour maximum (unless there is an individually signed 'opt out') but also the total earnings must at least equal the total generated by multiplying the National Minimum Wage by the total hours worked and/or on call. If this total is not met then any deficit must be paid. Failure to make good such deficit is a criminal offence with a maximum fine of £5,000.

Exceptions

Those excepted from this Act's scope include:

a) those genuinely self-employed;

b) children;

c) office holders (this would include directors who are not also employees);

d) members of the Armed Forces;

e) voluntary workers;

f) work experience trainees who are not employed;

g) family members not routinely working or employed (i.e. it would cover those who work regularly); and

h) custodial prisoners.

Record keeping

Employers must keep records which demonstrate that at least the NMW has been paid in respect of each hour worked. Since employers are also required to keep records of hours worked for the purposes of the WORKING TIME regulations, the possibility of linking the two could be considered. Contributions Agency enforcement officers have the right of access to records to check compliance.

Sanctions

All those covered (i.e. 'workers' including employees) may enforce their right to the NMW by access to an Employment Tribunal, and have the right not be subjected to sanction by the employer for so doing.

There are 6 criminal offences under the Act:

1. Willfully refusing or neglecting to pay a worker at least the NMW.
2. Failure to keep records.
3. Keeping of false records.

4. Producing false records.
5. Delaying or obstructing an enforcement officer.
6. Refusing to answer, provide information for, or produce a document for, an enforcement officer.

Each offence carries a £5,000 penalty. Whilst the fine can be levied against the employer, if the employer is a corporate body 'a director, manager, secretary or other similar officer of the body' (including partners in Scottish partnerships) could be held jointly liable for any offences committed under this Act where the offence is proved to have been due to their negligence, consent or connivance.

Types of work

The regulations recognise four types of work:

1. Time work

The worker works for a certain number of hours per working day but is not a salaried worker. He may be required to produce a certain output per hour or day but nevertheless earnings are determined by the number of hours worked. This should pose few problems in terms of calculation of the actual rate being paid – but see below for exclusions from and additions to the gross pay.

2. Output work

Earnings are geared to the number of items produced or sales made. Again, this should pose few problems provided the number of hours as well as the output (which generates the earnings), are recorded. Where there are no set hours the worker and the employer are required to form an agreement 'Hours of Output Worked in a Pay Reference Period' prior to the pay reference period. This must contain an estimate of the number of hours, will require the worker to keep a record of the number of hours worked and to give the employer a copy, and confirms the payment 'piece rate' or other output rate. The total of the hours for the period are called 'ascer-

tained hours' and each must be paid at the NMW rate. If however, the worker works in excess of these hours and generates additional output in addition they will be entitled to be paid for the excess output at the output rate.

3. Unmeasured work

Here the commitment is to work as and when needed (i.e. when there is work to be done). If time is used travelling in order to carry out unmeasured work it counts as time for which the NMW must be paid. The hours that count are either the hours worked or, like the arrangements for Output work, the worker and the employer must determine the average number of hours per day that the employer expects the worker to work and to be paid for.

4. Salaried work

The worker is employed at a fixed annual salary which is their total earnings apart possibly from a performance bonus. Employers need to know the basic hours for the year. Each year for the purposes of this calculation commences on the anniversary of their start date.

Calculation of hourly rate

a) The rate paid to an employee is calculated by reference to the number of hours in a 'pay reference period'. Such a period cannot be longer than a month, but can be any shorter period for which a worker is paid (e.g. a week, a fortnight, 4 weekly or since the start of employment). Obviously all hours worked in the period, including Travelling to externally-sited training etc., must be included.

b) The pay to be taken into account is the gross pay less non-allowable items. Non-allowable items include pay for:
   - being on call;
   - additional responsibilities;
   - unpleasant or dangerous conditions;
   - for accrued items;

- for absence;
- overtime and/or shift premiums;
- non payroll generated tips or gratuities; and
- reimbursement of travel expenses and so on.

In addition the following payments cannot be taken into account:

- payments in kind (except living accommodation the value of which can be added to the pay); and
- vouchers, loans, advances, pensions, allowances, awards, redundancy and so on.

To be included is:

- gross pay;
- productivity bonuses, profit/performance-related pay; and
- incentive payments and so on.

If the pay with legitimate inclusions but after non-allowable deductions b) is divided by the number of hours a), a rate per hour is arrived at. Providing this is in excess of the NMW at the time nothing needs to be done. If however, the hourly rate arrived at is less than that, then for each hour it must be topped up to at least the NMW.

Records

As can be seen from the above summary, detailed records need to be compiled and kept to ensure that the actual hourly rate for each type of worker is known, so that additional payments can be made if necessary to bring the rate up to at least the NMW.

Note: The foregoing is simply an outline guide to the principles of what are extremely detailed regulations. Reference should be made either to the regulations or to 'A detailed guide to the NMW' and the NMW enquiry service on 0845 6000678.

Notice boards

Basis for inclusion

Commercial advisability

Background

Most organisations use notices and notice boards to convey much of the information that they feel their employees should have, in order to keep them informed. Unfortunately, very often there is no control over the issuing of notices and many notice boards become swamped, with the effectiveness of new material impaired by numerous old notices, many of which may be well past their effective date. The challenge is to keep notices fresh and uncluttered so that notice boards are read, rather than passed by. This may be easier with electronic notice boards operated via an intranet but research indicates that most people do not like reading on-screen text.

Procedure

Whether traditional or electronic notice boards are used, the following guidance may be helpful in attempting to keep the messages required to be displayed, fresh and pertinent.

Suggested checklist

1. To be effective, data for display must be written in the language and for the understanding of the recipient, and be presented in a manner that will attract and retain attention. All notices should be approved for posting by [specify name] who will check that the content meets the above requirements.

Since the item will be posted on the [organisation] notice board, the very fact that it is posted will imply that the [Organisation] has approved the content. Someone at a senior level should therefore provide a check on this point.

2. All notices should bear origination and destruct dates. The destruct date being the date following which the notice should be withdrawn. To minimise notice boards becoming overburdened no notice will remain posted after its destruct date.

3. [Specify] will act as notice board administrator and will keep a register of all notices with origination and destruct dates, together with a master notice board which should show which notices are on display at any one time. (S)he is responsible for ensuring notices past their destruct date are removed.

4. All notice boards are numbered and numbered copies of each notice should be prepared to ensure that a copy of every notice is posted on every board.

5. Each week the administrator will post any required new notices and remove any notices which have passed their destruct date.

6. To aid employee recognition of subject matter, coloured paper will be used, red being used for safety matters, green for disciplinary items, yellow for benefit related topics, blue for social events and white for management initiated items.

7. Notices emanating from employees and/or their representatives will be displayed on the section of each board reserved for [non-organisational] matters. However, such notices will be expected to conform to the foregoing rules and must be controlled by this procedure. They will be required to bear a destruct date, etc. No notice will be posted which is poorly presented, is in poor taste or is in any way against the interests of the [Organisation]. In this respect, the decision of [specify] will be final.

8. Managers and those responsible for conducting team briefings etc.(see QUALITY CIRCLES and WORKS COUNCILS) are expected to check that notices are seen and read as part of the management or cascade briefing system, and to this end will be supplied with a copy of each notice posted.

Permanent notices

Some notices are required to be displayed permanently by law. It may be preferable to post such notices on separate boards. The difficulty is that because they are permanent they tend not to be 'seen'. The following list of statutorily required notices should be displayed:

1) Certificate of employer's liability insurance (renewed annually). Since 1st January 1999 each certificate has been required to be kept for 40 years.
2) Corporate name and address where documents may be served. This is a requirement for the benefit of third parties rather than employees.
3) Health and Safety policy (permanent).
4) Such notices as are required to be posted under the requirements of the Fire Certificate covering the premises (permanent).
5) Details of how first aid can be obtained/is administered.
6) Factories Act 1961 notice (permanent for factories).
7) Offices, shops and railway premises guide and thermometer (permanent for facilities covered by the guide only).
8) Wages council notices (where applicable).
9) (If a leaflet covering the item is not given to each employee) A notice under Health & Safety at Work Act 1974 – 'What you should know'.

WARNING: This list is an example and should be used as a base only. Individual industries may have additional notices which must be displayed and legislation tends to change the requirements on an ongoing basis.

Composition

Few writers seem to appreciate that when committing ideas, instructions or guidance to paper, they should always try to compose the item to meet the needs of the target audience. Basically, if the reader does not under-

stand the item written, then it is the writer's fault since they have not presented the information in a format capable of being easily understood by the target audience. Thus, having drafted an item the composer of a notice should review it and possibly even check it for ease of comprehension with a person from the target audience.

For my book 'How to be a great communicator' (Pitman 1995), the following guidance was provided on the presentation of written material derived from research within a number of organisations.

Written information should:

- be well spaced with good use of headlines, sub-headlines and visual impact (that is leaving plenty of white paper to avoid the page looking too cramped);
- use bite-sized chunks of text (say not more than 100 words in the average paragraph) so the content is easy to digest;
- be written in language that is easy to understand at first glance – since only if initial attention is retained may the item be read at all. (This indicates a need to use simple rather than complex sentences.);
- be presented using lines of type with on average no more than 65 characters (including letters and punctuation marks);
- written in ordinary everyday English avoiding jargon or if this is unavoidable explaining any jargon as a footnote;
- avoid presenting data in a way that makes the written page look dense. If it is, it will almost certainly repel the reader rather than attracting them, whereas the whole rationale of a notice is to attract attention – to more swiftly convey the message.

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Organisation charts

Basis for inclusion

Commercial advisability

Background

It is often difficult for employees, particularly newcomers, to understand where their department fits within the whole Organisation and their departmental relationships, even though such knowledge may be essential to understand priorities and procedures. One way of overcoming this problem is to publish charts showing such relationships.

Format

In the two examples shown below, the same structure has been depicted. The 'vertical levels of authority' are widely used but this suffers from two drawbacks. It is usually shown (as here) as a pyramid, with the chairman/chief executive at the 'top' and the ordinary employees at the 'bottom' – an inference which maybe against the ethos of the Organisation. This can be overcome by simply inverting the pyramid – the relationships do not alter, but the psychological overtones of being at the 'top' and 'bottom' are at least blurred. The other disadvantage is that being drawn in vertical levels it implies that departments (and their managers) or personnel on the same level, have the same 'importance' or 'value'. Logically, it may be preferable to show the departments on the same 'level' to emphasise a relationship, even though their status is not identical. Either the relative positions of departments and/or personnel should be care-

fully checked and discrepancies eradicated, or the chart should carry a note such as 'The positioning of departments (and personnel) on certain levels is not indicative of importance, status or responsibility'. Even with such a warning it is difficult to overcome the strong inference of 'equality' (or 'inequality') presented by the visual image of the chart.

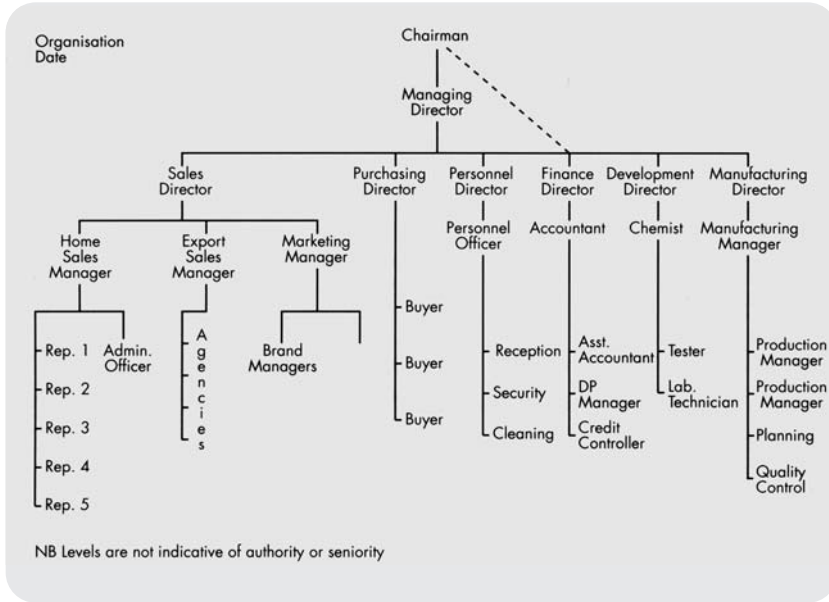

Figure 1: A 'traditional' hierarchical Organisation chart

As an alternative, the chart can be drawn with departments depicted within circles emanating from the Board, which is shown as the core. This overcomes the 'top' and 'bottom' overtones and blurs the problem that may arise over levels of importance and/or authority. However, it also blurs the chain of command and may not show the relationships between departments clearly.

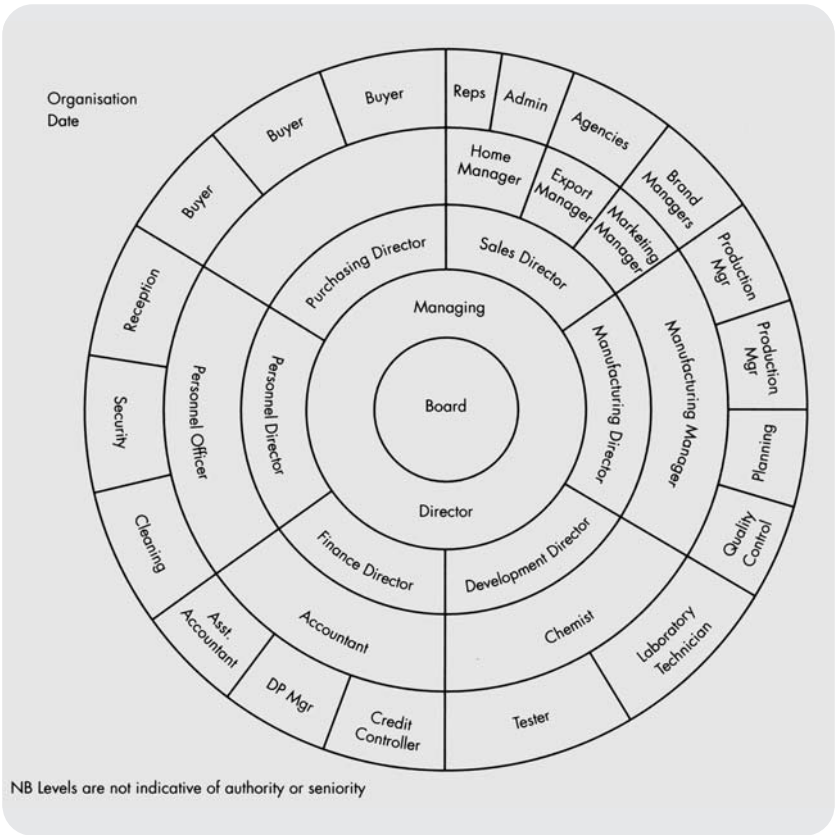

Figure 2: An alternative Organisation chart on a web or wheel basis

If it is preferred to use the circular Organisation chart to avoid suggestions of subserviency and encourage motivation, the relationships between departments can be shown by using a relationship chart.

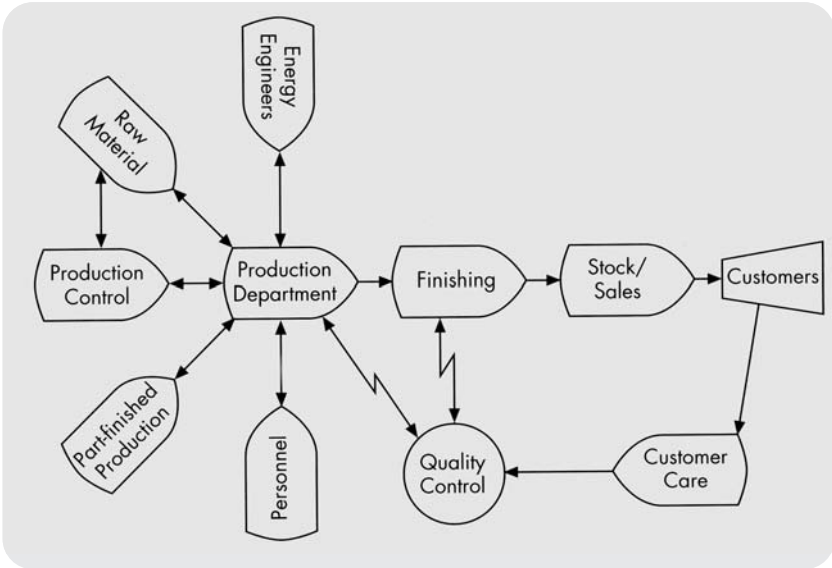

Figure 3: A working relationships chart

Such charts are meant to focus on the subject department and show other departments relating to it. Accordingly, each department may need to be provided with such a chart. The question of relationships should be addressed during any FAMILIARISATION process.

The external dimension

Traditionally, Organisation charts are for internal use only. However, those organisations that interface directly with the public (and even some where such interface is indirect or merely with other corporate entities) could consider adding a further 'line' or segment to the chart – namely that of the customer. The aim of the Organisation is to make and provide goods or a service to its customers, and leaving them off the Organisation chart negates their important role. After all, it is the customer who pays for everything in the Organisation, including all the wages of everyone working there.

Outplacement

Basis for inclusion

Commercial advisability

Background

Redundancy is a dismissal but unlike other dismissals it is one for which the employee was in no way responsible or culpable. The employer bears the responsibility since they have too much productive capacity for the current demand for products or services. There is at the very least a moral responsibility placed on the employer when dispensing with employees in this situation to try to find, or assist them in finding, alternative work.

Employer assistance

Having determined who is to be made REDUNDANT a responsible employer should at least consider if there are ways in which support and assistance can be provided for those forced out of a job. This could include:

- Paper assistance guiding those seeking jobs.
- Administrative internal assistance.
- Contacting local employers, obtaining vacancy lists for leavers.
- Career counselling.
- Encouraging, possibly with offers of short-term contracts, redundant employees to set up their own businesses.

Guidance for those leaving

This following checklist has been designed primarily to help shop floor employees and some items will need reconsideration for use by senior and/or experienced employees.

1. Keep your notice letter safely, as it gives information on a number of items that you may need to refer to in the coming weeks. Write your National Insurance number on the letter for ease of reference.
2. If you wish to continue working you will need to either obtain another job from your own resources (replying to advertisements, contacts etc.,) or use the Job Centre. If you wish to use the Job Centre look up the address in the telephone directory. You will need to register using Form ES1 from the Centre.
3. If you cease work before the end of your notice period (in other words you are given pay in lieu of notice) this does not stop you registering with the Job Centre. Neither does it stop you registering for the Jobseekers Allowance. However, you will not be eligible for the Allowance until the expiry of your notice period.
4. Even though (since you have been paid wages in lieu of notice) you may not be eligible for benefit for some weeks it is worth registering immediately
5. To register as a Jobseeker you will need to take your P45 (this will be given to you with your redundancy money and final wages etc., on the day you cease work) and the information set out in your notice letter.
6. Any accrued holiday pay will be paid plus salary/wages in lieu of notice and the redundancy amount due. Holiday pay is taxable. Wages in lieu of notice (provided this arrangement is not included in your contract of employment) and redundancy payments (up to £30,000) are not usually taxable.

Neither holiday pay nor redundancy affect any benefit due. Jobseekers Allowance is payable on a per week basis for full N.I. payers (plus an added amount per week for a dependent relative) for the period after your notice expires except for the first 3 days.

7. You may be additionally entitled to supplementary benefit which depends on your income and savings. To claim such benefit you will have to provide the Department of Work and Pensions with a statement of your income and outgoings.

Finding new employment

The purpose of these notes is to remind you of a few points that may help improve your chances of getting a new job. However, unless you start with a positive attitude – putting the redundancy behind you – your chances of getting a new job may be severely restricted. Experience has shown that provided they have the right (positive) attitude, over 90% of employees made redundant go on to a better position.

Which job do I want?

Most people tend to drift into jobs, and even from one job to another, without thinking which job they would really like to do. Leaving a job at a time not of your choosing but with a little money may be an opportunity to stop and consider the job you would prefer to do. Talk about any such preferences at the Job Centre and to friends – it may help sort out the kind of job that will most appeal to you. Inevitably, not everyone can find their ideal job – but it is a starting point.

Finding a job

Before you get a job you must first get an interview, which may be the most difficult part of getting a job. Check (and keep checking):

- the Job Centre (register first, and then check daily);
- local papers (get to the shop as soon as they are delivered);
- relatives, friends, colleagues, local traders; and
- local shops, businesses, factories (keep checking – your persistence may pay off).

Application forms

Completing an application form is a bit of a chore but it must stand out from the rest of the forms that a Personnel Manager may receive in one day.

1) Before completing it, read it through and gather all the information you will require.
2) If you are not used to completing this type of form, write the answers to the questions on a piece of paper first (check the spellings of words of which you are unsure).
3) Use a black pen and check to see if it asks you to use BLOCK CAPITALS. If is does then USE THEM.
4) Complete the form carefully and clearly.
5) Give as much information as you can – single word answers to questions such as 'why did you leave?', do not tell the reader very much.
6) Include all your personal achievements, for example:
   - first aid course passed (date);
   - member of Parent Teachers Association;
   - member of the Territorial Army;

   and so on.
7) Keep the form clean and uncreased.
8) Send it back (first class) with a short covering letter:

Dear _____

I enclose an application form for the job of .which I understand is vacant. I will be pleased to attend for interview assuming you wish to take my application further. I look forward to hearing from you,

Yours sincerely

9) Make sure your letter is clean, clear and uncreased.

10) Take a copy of the form and letter if possible, your application form is you on paper. For the reader to be interested, he/she needs to find the form interesting. If your application form is untidy, dirty and carelessly filled in, it gives the same impression of you and will probably move no further than the waste paper basket. It is worth taking time to complete it as well as you can.

Going for the interview

1) Make sure you know exactly where you have to go and what time. If you are unsure about directions telephone the employer and ask. Check on bus etc., times beforehand.

2) Dress tidily and neatly.

3) Aim to arrive 15 minutes before the time of the interview – better to be 15 minutes early than 15 seconds late.

4) Take your copy of the application form and a pen with you.

5) Make sure you know the name of the person you are going to see – if you do not hear it properly ask for it to be repeated and make a note on your application form copy.

6) During the interview make notes of the details the interviewer tells you – rate of pay, hours, holidays etc.

7) If the interviewer asks if you have any queries try to think of one or two. You could ask:
   - 'Is this job permanent?'
   - 'Will I be given any training?'
   - 'Would I always work in the same department?', and so on.

Remember that an interview is a two way enquiry. The employer wants to know about you to see if you would make a suitable employee, but you also want to know about the employer – is it one with which you wish to work?

Leaving the interview

Take careful note of how the interview is left – are they going to write to you, and if so, when? Also be careful to note if the interviewer asks you to do anything – and if he/she does, then make sure you do it.

References

Most employers will ask for details of previous employers to whom they can write, in order to obtain a reference. Keep a note of the person's name, telephone number and address who can provide a reference for you.

Internal support

It may have been some time since those made redundant had to apply for and be interviewed for a job. They may benefit from a short internal course run by the organisation own personnel recruiters, who could guide them on the submission of applications and their conduct at interviews etc. Taking this one stage further the Organisation has available all the office facilities which many applicants will lack – copier, fax, word-processing facilities, even a telephone. Making such resources available to leavers for say 6-8 weeks at a set time each week may provide not only valuable administrative support, but also some moral support from their erstwhile employer.

There have been some notable instances where those made redundant have created businesses of their own. In some cases they were able to start firstly, since they had a tax free lump sum from their redundancy payment and the old employer enabled them to start their fledgling business with a short-term contract. Providing guidance to those who want to set up on their own, either internally or sourcing external assistance can be very valuable – and highly valued. Such assistance will be noted by the survivors, demonstrating to them that their employer is trying to help. This in turn should support their morale. It is often overlooked that they may need support, since not only have they lost friends and colleagues but also they may have new challenges and additional work. Most people are creatures of habit who dislike change.

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Part-time employees

Basis for inclusion

Legal obligation

Background

As employee rights proliferated, some employers negated their impact by restricting the numbers of employees entitled to such protection. To offset the impact of such action, legislation gives people working under 'non-standard' contracts the same or similar rights to permanent employees. There are currently two classes of workers protected by this 'comparability' legislation – Part-Time and Fixed Term employees.

Commentary

Under The Part Time Employees (Prevention of Less Favourable Treatment) Regulations 2000 those part timers who perform comparable work to their full-time colleagues are entitled to the same rights and benefits unless the difference can be objectively justified. In this context, what constitutes 'full-time' is for each individual employer to determine, but anyone who works fewer hours than whatever is full-time is regarded as a part-timer.

Thus part-time employees doing comparable work to full-timers – should, for example, be advised of vacancies (as are full-time employees) and – must receive similar benefits to their full-time colleagues – this could include training, mentoring, long service awards etc.

The test is whether the person is doing comparable work. If no-one performs the job on a full-time basis then there is no comparability and no need to provide similar benefits.

Case study

In *Mathews v Kent & Medway Towns Fire Authority*, the dispute centred around the different treatment given to retained and full-time firefighters. Although the 'retained' (part-time) firefighters claimed they carried out broadly similar duties to their full-time colleagues, the EAT held that 'retained firefighters are employed under a different type of contract' to that of the full-time firefighters and neither were they engaged in the 'same or broadly similar work'.

It must be said that this ruling has thrown the whole concept of 'comparability' into disarray. This decision was confirmed on appeal.

Effects of the principle

Subject to regional variances, in the UK, four public holidays occur on Mondays, one on a Friday and the remaining three on days which change each calendar year. Assuming that an employer pays full-time staff for public holidays (and if they do not the following does NOT apply) they need to ensure that part-timers who do not work regularly on all days do not suffer a detriment compared to those who work on all days. A part-timer's entitlement regarding the benefit of such days needs to be established (as well as being reviewed at the start of every year). For example, if there were two cleaners, one working 7½ hours a day for two days a week and the other working full-time, 7 hours a day for a 5 day week, the employer would have to conduct the following analysis:

a) Establish the total number of hours of the paid public holidays (e.g. 8 at 7 working hours a day = 56 hours) to which the full-timer was entitled.

b) Establish the proportion of a working week that a part-timer doing comparable work is required to work (e.g. 15 hours out of 35).

c) The part-timer will be entitled to 15/35 of the 56 hours (i.e. 24).

d) A part-timer who works on days on which no public holiday occurs will be entitled to an additional 24 hours paid holiday (assuming they are employed for the whole year).

This creates administrative problems for employers with large numbers of part-timers, not least since the calculation needs to be made on virtually an individual employee basis – and for each year (or part year, if they are not employed during the whole year).

The future

As a result of the new rights of those with child rearing responsibilities to ask their employers to make FLEXIBLE WORKING arrangements, there is likely to be an increase in the number of both sexes wishing to work part-time. Since other employees (without such responsibilities) are now indicating they would also like to be able to work flexible hours this trend is unlikely to diminish.

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Payment in lieu

Basis for inclusion

Legal implications

Background

Where an employer does not wish a leaving employee to work the notice period required under their contract (irrespective of which party has initiated termination), a payment in lieu of notice (PILON) in respect of the time and benefits of the notice period can be paid.

Definition

PILONs can either be contractual or ad hoc. A PILON becomes contractual where the right is specified in the CONTRACT or other contract documentation – the employer takes the right to make such a payment, rather than allowing the employee to work the notice period. The alternative is an ad hoc PILON, where the decision is made without pre-meditation and is non-contractual. Where the right is contractual, exercising the right does not breach the contract and thus all the contract terms (e.g. non-competition clauses) are still operative. Where the right is exercised in an ad hoc manner and there is no contractual right, the employer can exercise the right but, in that case, this destroys the contract and other clauses cannot then be relied upon by the employer – thus a non-competition clause would cease to have effect.

Taxation effect

Since the attitude of the Inland Revenue continues to harden against all such payments being tax free, these comments are suggestive only. If the contract stipulates that a payment in lieu can be made in the above circumstances then the company, in making the payment, must deduct tax and national insurance from the payment since the Revenue regard it as a commitment to pay. However, if the PILON is made on an ad hoc basis then (subject to a limit – currently £30,000) no tax or national insurance will normally be payable. This understanding has been altered a number of times in recent years, so it may be worth checking this with the employer's Tax Inspector. The ability to make the payment gross can also depend on what has happened previously. Thus, if the employer has made a habit of making PILONs the Inland Revenue may argue that by custom and practice there is an implied clause, and thus the payment should be subject to tax and national insurance deductions.

What to pay

Where the decision that the employee should not work is made by the employer, although the situation regarding payment in respect of the wages that would otherwise be payable is fairly clear, if there are contractual benefits to which the employee is entitled, the payment should reflect these or else their provision should be continued during what would otherwise be the notice period. For example, if an employee is entitled to private use of a company car then such use should normally be allowed – or compensation paid if not (the calculation of value here can be complex). However, if the use of the car is restricted only to business use then this facility may not be necessary, as if the employee is not working then the use of the car must be nil. Since holidays normally accrue in relation to service then the employee will normally be entitled to compensation for the holiday that would have accrued had the notice period been worked. Since the employee is not required to work most employers would argue that since the period is being paid for, without a requirement on the part of the employee to work, the holiday is paid for. It may be best to state this in any clause.

Case study

In *Whittle Contractors Ltd v Smith*, the EAT held that where an employer failed to pay holiday pay accrued during a 'garden leave' period this amounted to an unlawful deduction from wages.

Obviously, any holiday accrued (but not taken) as a result of earlier employment should be paid for. A similar examination to those set out above needs to be conducted for each contractual benefit. Trying to calculate a payment in respect of some such items may pose such problems that it may be easier to allow the benefits to subsist. This may particularly be the case with contractual bonuses, where these are time/service based rather than performance related.

Overpayments

An employee may have taken in excess of what would strictly be allowed by their service to termination date. Only if the contract stipulates or the employee specifically agrees should there be any clawback of such excess. Further, only if the employee specifically signs to that effect should the monetary value be deducted from monies due for wages etc.

Loans

Where LOANS remain outstanding it may be possible to gain agreement to deduct the balance from the PILON – once again this should only be done where there is a specific agreement. Ideally, the loan agreement should address this point (e.g. only granting the loan on the understanding that, in the event of a termination of employment no matter what the cause, the outstanding balance can be deducted from any amount due).

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Pay policy

Basis for inclusion

Commercial advisability – criteria for the 'placement' of new jobs

Background

For all employers, it is important to try and establish sustainable differentials between jobs – possibly by a process of job grading. The problem with differentials is that there is a dual perspective and the old joke is perhaps apposite: 'if I am paid more than you – that is a differential, but if you are paid more than me, that is a discrepancy.' A pay/benefits chart may also be helpful.

Factors

Unless there is a demonstrable process of job worth assessment, the 'seems about right ' method of determining a package may create problems. It may be difficult to substantiate differentials generated without, at least, an awareness of a number of factors. All employers should continually review their reward package which is determined by a number of factors.

1. The market rate – what other employers are paying for similar jobs in the locale. This can be determined from checking with the media, job centres, local employers' information exchange, industry wide information exchange, local, regional and national surveys, and even government statistics (although nationally based figures should be treated with some caution, simply due to the effect of compiling statistics based on estimates, or even guesses,

from respondents). If the employer wishes to retain good employees it may be advisable to pay slightly over the market rate, but only those that merit a premium should be recruited (or at least retained).

2. The availability of suitable labour. If employees can be trained to perform particular jobs in-house, is the supply of trainable labour scarce or plentiful?
3. The availability of required skill levels. If labour cannot be trained, are the skills we need scarce or plentiful? The organisation attitude to both these points may also help with staff retention. Many employees value the opportunity to improve their personal skills and it is largely a fallacy that well-trained employees are more likely to leave. Most people will leave if they cannot exercise skills that they have or have acquired.
4. The particular requirements of the Organisation. Are our needs special so that we restrict the numbers who can apply? In such a case, a premium to the market rate will almost certainly need to be paid.
5. The particular requirements of the job. Are the needs of these jobs so special that the numbers who can apply are further restricted? A premium to attract suitable candidates may have to be offered.
6. Long-term developments within the Organisation. Are we looking for short-term 'peak cover', project-related work, or long-term employees? Although it could be argued that those wanted for short-term contracts could be paid less, to obtain the skills we need a premium may be necessary. In any event, under the FIXED TERM contracts legislation, if such people are performing duties comparable to permanent personnel they are entitled (unless it can be objectively justified otherwise) to the same benefits as the latter.

Reviews

A similar analysis should be carried out at least annually and possibly more often, in order to ensure that the perceived value 'package' on offer is main-

tained. Failure to do this may lead to the loss of a number of employees – probably those the employer least wishes to lose. If wages are reviewed annually the word 'review' tends to become synonymous with 'increase'. Employers believing in the value of recognition may find that granting small increases more often – and particularly if related to effort – can have a greater effect on morale than an annual review. It is generally accepted that the motivational benefit of a pay increase is eradicated within three months. Granting small increments tends to distort differentials however, unless a system of base salary (linked to a graded analysis of jobs) is used, with discretionary motivational payments paid on top (the latter being related more to the approach to the job by the job holder, rather than the value of the job itself).

Training grades

Where performance increases with experience, newcomers could be put on a Training Grade – that is being paid, say 10-20% less than the actual rate for the job. As they become more proficient their payment can be increased until they achieve the required work rate or standard, and can command the full rate.

Long service pay

The principle whereby longer service employees are paid more than their shorter service colleagues, where experience has very little effect on output, must at least be challenged. Loyalty and/or long service may be better recognised by allocating increased holiday entitlement or other non-monetary benefits. Some commentators have suggested that when 'anti-ageism' legislation is introduced, long service payments and even additional benefits could be discriminatory. If such payments are to be made they may be best described as 'service related' and delineated as a separate payment, rather than as part of the salary, thus preserving the 'distinct' rate for the job.

Job grading

The relationships (in financial and other reward terms) between various functions within an Organisation need to be supportable if arguments regarding differentials are to be avoided – or answered. Whilst a director may be able to satisfy him or herself as to the appropriateness of paying X more than Y, should there be a dispute, for example, regarding the principle of equal pay, some objective measure will be required to support such a 'gut feeling'. A degree of objectivity is required, to which end the person responsible for the task needs to be experienced in the operations required to be graded and to understand the grading scheme adopted.

The principles and practice of the scheme need to be explained to all involved, together with assurances that appeals will be held and examined impartially. Although a simple scheme such as paired comparisons (see below) does not require weighting of factors, most other schemes do incorporate this aspect and there needs to be general agreement regarding the various factors before implementation. Any weighting must be able to be justified.

Paired comparisons

Paired comparisons, which is probably the simplest form of job grading, entails taking any two tasks and subjectively assessing which is 'worth more' than the other. A number of people can be asked their opinion to avoid favouritism or victimisation. The scores arrived at will not only indicate relative merit but also a crude relationship between the jobs which might allow some kind of differential to be applied – although this could be risky. It is essential that those asked to participate are knowledgeable concerning all the jobs.

Example

Compare one job with another – if believed to be 'more value' score 2, 'equal value' score 1 and 'lower value' score 0.

	R	M	C	S	L	Total
Receptionist	–	1	2	1	2	6
Machinist	0	–	2	2	2	6
Canteen	0	1	–	0	1	2
Security	1	2	2	–	2	7
Labourer	0	0	1	0	–	1

Here, security personnel are perceived to be worth slightly more than the receptionist, who is equally rated to a machinist who are ranked appreciably higher than a canteen assistant and a labourer. Whilst this may be appropriate (although in some organisations no doubt the receptionist would score at least equal to and possibly higher, than security personnel), all that has been arrived at is a guide to perceived relativity. If on reflection this is felt to be incorrect some kind of weighting might have to be used which cannot normally be incorporated in a simple paired comparison. Where guidance to differentials is required, other schemes should be considered. There are several used fairly widely and specific guidance from someone experienced in such schemes is essential. Implementing a scheme without such training and experience is likely to result in inappropriate weightings and improper differentials, which can only result in arguments and discord.

Differentials

Human nature being what it is, if an employer of any size does not have a clearly differentiated grading structure, there will be complaints relating to salary differentials. The basis of these may be less that the complainant is unhappy with their own package, than that they fail to see why another employee should be entitled to their (perceived to be better) package. To minimise such complaints a chart showing all the employment grades with the benefits (and salary ranges if appropriate) and augmentation of benefits where these are related to service should be drawn up and adhered to. Any deviations from the list should only be allowed subject to strict control and with sound reasons capable of being demonstrated, should dissent follow.

Contracts/Grades	Directors	Managers	Skilled	Unskilled
1. Contracts	A	B	C	D
2. Holidays (days) With 5 yrs service	25 30	22 25	20 21	20 20
3. Sickness (days) With 5 yrs service then at Board discretion	30 45	25 30	20 25	15 20
4. Notice (weeks)	26	13	Statutory	
5. Pension	Non-contrib	Contributory if wished		
Access to stakeholder	Yes	Yes	Yes	Yes
6. Life Assurance	4xsalary	2xsalary	_	_
7. Car (with fuel for private use)	Yes	Yes	–	–
8. Telephone	Yes	Yes (if req'd)	–	–
9. Medical insurance (Family covered if employee pays)	Yes	Yes	–	–
10. Bonus	Yes (on profits)	Yes (department schemes)	Yes	Yes
11. Overtime (subject to prior approval)	–	–	Yes	Yes
12. Permanent Health	Yes	Yes	–	–
13. Personal accident	4xSalary	2xSalary	1xSalary	–

Territory payments

Sales representatives are often allocated a territory, with the undertaking that their earnings are in part or whole generated by commission on the value of the business or sales obtained from customers in their territory. However, a territory's potential can be changed by external forces, and/or demand can be altered by the development of new products so that it becomes virtually impossible for one person to service the territory adequately. To maximise sales the employer may wish to split the territory (or change its boundaries in some way) and/or allocate an additional member(s) of staff to exploit it more fully. The effect on the person originally servicing the area is that their income is cut, unless there is a clawback provision which in whole or part compensates them by, for example, increasing their salary (at least in part) to reward them for building up the territory. Alternatively, it might be thought advisable to retain the right to give (say) 6 months notice of a wish to change the whole basis of remuneration – although if this would lead to a reduction of income, the potential demotivational effect of this should not be underestimated.

Negotiation and agreement

Unless the alteration envisaged above is handled with great care and with the agreement of both parties, it can lead to tribunal action.

Case study

In *Star Newspapers Ltd v Jordan*, the EAT held that the employer had to consider the detrimental effect on the employee's earnings caused by a change in the geographic area from which she gained commission which formed part of her total earnings. Mrs Jordan refused to agree to the change without compensation, and the EAT found her subsequent dismissal unfair.

The requirements of the NATIONAL MINIMUM WAGE also need to be observed. Thus, it may be difficult to comply with such requirements where an employee is paid only via commission. There might need to be a guaranteed minimum level of earnings.

Preservation of records

Basis for inclusion

Legal requirement and commercially advisable

Background

Many company records need to be adequately protected and made easily accessible whilst current, and carefully stored when dead. Retention can be categorised as a statutory requirement (SR), or because it is commercially advisable or prudent, or for social/historical or general interest purposes.

Payroll records are unlikely to fall into the last category although personnel/employment records, with which such records are often virtually inextricably linked, may. However, employers should consider the manner in which they preserve records since some are subject to statutory requirements not least the DATA PROTECTION Act.

Retrieval and reference

The current practice of both the Inland Revenue and the Contributions Agency seeking from employers information more than 6 years old, should remind administrators of the need to check that such information is available and that there is a comprehensive 'retain, preserve and/or destroy' policy for all records, not that the preservation period is necessarily easy to determine. For example, to support Corporation Tax calculations, 20 years accounting records are required to be preserved. If the pay records are considered to be supporting material for this purpose then, although

normally they would be required to be kept for a much shorter period, this requirement may overrule that. Accordingly, the periods shown in this section are recommendations only, and particular organisations and/or industries should determine their own policy.

Miniaturised records

The apparently ever-increasing requirement to preserve records may create a space problem. For many years it has been possible to microfilm records and then destroy the originals. The microfilm records must be supported by a certificate by a person conversant with the records and the microfilm process, as to its authenticity and care of preparation. (See British Standard 6498). More recently, the development of optical disk recording techniques enables a form of record to be prepared which has all the advantages of tiny volume and yet greater ease of access than microfilm provides. Advice should be taken on adequate preparation of such storage media – for example, the disks must be made unalterable and there must be a means of proving the veracity of the records. Under the Civil Evidence Act 1995, computerised records are acceptable as evidence in court.

Storage and protection

Records should be stored where they will be secure from perils, including theft and pest destruction or damage, and yet reasonably accessible. Another advantage of computerised records is that duplicate records are both easy to create and store. Some records need to be stored in fire, or other risk, protected containers, despite the existence of back-up data. The policy should address these points. A destruction date for each container/record should be decided upon and clearly stated on the exterior. This note should also state the means of disposal – shredding, incineration, specialist processing, or other alternative.

Employment records

There follows a selection of records with suggested preservation periods. Where SR is shown there is a statutory requirement to preserve – otherwise the terms suggested are commercial advisability suggestions.

General employment data

***Data**: Recruitment data, applications, details of candidate choice.*

Retain: Duration of employment plus 6 years (as a standard retention period) to defend possible discrimination action, and for possible repeat future RECRUITMENT.

***Data**: Authorities to recruit, pay, increase/decrease pay, make deductions, pay by credit transfer, terminate, etc. Clock cards, copy pay advices, pay summary accounts. Absence records.*

Retain: Suggest at least 6 years from termination date – data available for audit, dispute, evidence loss of earnings claims, etc.

***Data**: Information required for National Minimum Wage Regulations.*

Retain: SR – 3 years under National Minimum Wage Regulations 1999 but suggest 6 years as standard (For NMW guidance contact 0845 8450 360).

***Data**: Information required to be kept under the Working Time regulations (e.g. individual opt outs, agreements to vary the regulations, etc.).*

Retain: Suggest 6 years as standard.

***Data**: Statutory Sick Pay and Statutory Maternity Pay records.*

Retain: SR – 3 years under Regulation 13 of SSP Regs 1982 and Reg 26 of SMP Regs 1986, but suggest 6 years as standard.

***Data**: Statutory Paternity Pay and Statutory Adoption Pay records, Forms SC3 and SC4.*

Retain: SR -3 years but suggest 6 as standard.

***Data**: Parental leave and family emergency leave taken.*

Retain: Until 6 years after relevant child's 5th birthday or, if child is disabled or adopted, after expiry of entitlement.

***Data**: Flexible working request.*

Retain: 6 years from application as standard.

***Data**: Calculation of pay records, Deduction sheets, details of code numbers supplied by the Inland Revenue, employers copy P45 and P46 not sent to IR. Tax and N I deduction calculations correspondence with IR and DSS/Contributions Agency.*

Retain: SR – 3 years under Regulation 13 of Income Tax (Employment) Regs 1973 but suggest 12 since IR have queried employers going back that far.

***Data**: Earnings and numbers employed summaries, Dispensations granted by Inspector of Taxes. Redundancy papers, payment calculation refunds from Redundancy Fund.*

Retain: Suggest 6 years from termination to cover possible enquiries.

***Data**: Disabled persons applications, consultation etc.*

Retain: Suggest 6 years from currency in case of discrimination claim.

***Data**: Tribunal claims, back up papers and statistics.*

Retain: Suggest 6 years after settlement.

***Data**: Personnel files and correspondence.*

Retain: 6 years after year of termination (may be prudent to keep a synopsis of the employment record for a further 6 years available for REFERENCE requests).

The subject must be allowed access under the DATA PROTECTION Act. A fee of up to £10 can be charged.

***Data**: Personnel medical records. Health records. Accident reports and records, accident record books.*

Retain: At least 40 years, possibly indefinitely, as defunct companies can be resurrected to allow the pursuance of employee and other liability claims. It is for this reason Certificates of Employers Liability must be kept for 40 years. Certain companies and/or industries may need to adopt specific rules in this regard.

Subject has right of access under Access to Medical Records Act 1988, and if he/she disagrees, their comments must be noted on the record.

Subject has right of access to health records compiled since 1.11.91 under Access to Health Records Act 1990, and, if they feel they are inaccurate, to request alteration.

***Data**: Trades Unions agreements.*

Retain: Life of agreement plus 6 years.

Insurance data

Data: Employer Liability insurance certificates.

Retain: 40 years from year of cover.

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Probationary period

Basis for inclusion

Commercial advisability

Background

Since the employer 'pays the piper' they are entitled to 'call the tune' in the framing of rules and requiring adherence by their employees. Some employees will find certain environments amenable – others will not. Since it is impossible for the exact environment to be interpreted and explained during the interview process there is an element of luck in recruitment. Accordingly, it may be advisable to commence employment with a probationary period during which time both parties 'try out' the relationship without long-term commitment – possibly at an introductory salary which could be increased once performance is assured.

Commentary

Imposing a trial period is less of a risk for the employer than the employee, since the latter may well have left other permanent employment to take up the new position. In addition, an employee has no right to complain of unfair dismissal until they have completed a year's service – although there are a range of other breaches of employment protection where no service requirement is necessary.

The employer can insist on a probationary period of any length, within reason. Legally employees must be given a CONTRACT within 8 weeks of their start date and it may be that this could be a logical period, although the period more commonly used is three months.

Wording

Stipulating a probationary period is not constrained legally – it is a matter of the contractual terms between the parties. Similarly, employers can use any wording that they think is appropriate but it should cover all eventualities.

Example of probationary clause

This employment is subject to a probationary period of [length]. By the expiry of that period a decision will be made regarding further employment. This decision could be:

- *that permanent employment is confirmed; or*
- *that a further period of probation is required before a decision is made; or*
- *that employment should be confirmed.*

During the probationary period (and any extension of such period) normal notice [e.g. one week] rules apply.

Such a clause provides flexibility to the employer to terminate employment earlier than the expected expiry date of the period, or to extend the period if they are unsure about the performance etc. It is important to stipulate that a week's notice can terminate employment as loose wording of such clauses may unintentionally create a fixed term contract of the period, thus requiring the employer to pay for the whole period. For example, if the clause stated the decision will be made 'at the end of the probationary period' this infers that the probationer will be employed for at least three months.

Extension

Obviously, if the employer is confident the employee is right for the job, the probationary period can be brought to an end before the term stipulated. If, however, there is uncertainty, the period should be extended

and, to ensure there is clarity about the situation, it may be advisable to confirm this in writing.

Example of extending probationary period letter

'By a letter dated [xxx] your employment with this organisation was made subject to a probationary period due to expire on [date]. We feel unable at this point to confirm permanent employment and thus wish to extend the probationary period by [x] weeks to [date]. As previously during this period normal notice [e.g. one week] rules apply.'

It would be logical if unable to confirm permanent employment for the employer to provide some guidance regarding areas of performance etc. which need attention (that is not waiting until the end of the period if performance is unsatisfactory).

Confirming employment

In the interests of clarity, it would be preferable for an employer when deciding that employment can be made permanent, to confirm this in writing.

'You are aware that we made your appointment subject to a probationary period. I am pleased to be able to confirm that your probationary period has now ended and we can confirm you are now on the permanent payroll of this organisation.'

The date of the start of the probationary period (not the date permanent employment is confirmed as starting) should be used as the employment start date. It is permissible to state that no paid holiday can be taken during a three month probationary period (but probably not for any longer period) although the amount of holiday entitlement still accrues during that period.

Policy

It may be helpful to devise a probationary period and to set this out in the HANDBOOK.

1. In certain circumstances the [organisation] may feel unable to confirm permanent employment on recruitment.
2. Where this is the case a probationary period will be used. Employees will not be regarded as part of the permanent staff until confirmation that their probationary period has come to an end.
3. Probationary periods will normally last [x] weeks but this may be varied in certain circumstances.
4. All probationary terms including any extension or waiving will be confirmed in writing.

It may be advisable to make all appointments subject to:

a) a probationary period as set out above;

b) receipt of REFERENCES satisfactory to the employer; and

c) the receipt of a clear criminal record from the Criminal Records Bureaux.

Note: The DTI advice that there is no requirement to provide paid holiday for an employee whilst they work a three month probationary period. They must accrue such an entitlement which could be taken after the end of the period. Of course, if the employer permits they could take unpaid leave during the period.

(See RECRUITMENT.)

Pseudo-employees

Basis for inclusion

Clarity of relationships

Background

Individuals carrying out work for an Organisation for payment are not necessarily employees of that Organisation. The distinction between the self-employed who carry out work for an Organisation under what is a 'contract for service', and employees who carry out work under a 'contract of service' is unclear. Employment legislation sometimes gives benefits and/or rights to 'workers' rather than 'employees'. All employees are workers but not all workers are employees.

Determination

Guidance as to whether a person is or is not self-employed and therefore not an employee, can be gained from the answers to questions such as:

a) Does the person have managerial control over their own activities?

b) Do they have investment control over their actions?

c) Have they the right to hire and fire their own staff?

d) Are they registered for VAT?

e) Can the individual refuse to carry out work offered without sanction?

If the answers are YES then almost certainly the person is self-employed, particularly if the question:

f) Is the Organisation obliged to provide work for the individual?

generates the answer NO.

Conversely, if the Organisation:

a) directs the work of the person;

b) dictates the time the work is done and its manner;

c) exercises control over the person, particularly disciplining them; and

d) has an ongoing obligation to provide work (and pay for it) for the person;

then almost certainly that person is an employee.

Case study

Mrs Carmichael became a casual guide for National Power, who would ask if she could attend on a certain day. She could say no (if, for example, it was inconvenient) or she could agree, in which case they paid her for the time she worked. She then claimed that she was entitled to statutory holiday pay. National Power replied she was not an employee and was not entitled. The House of Lords held that she was not an employee because there was no 'mutuality of interest' between the parties. She was not obliged to work when they invited her to do so – and the company was not obliged to offer work.

Under revised understanding of the meaning of the Working Time Regulations if she brought her case now, Mrs Carmichael might be entitled to holiday pay (see the Byrne case below).

Taxation implications

In 1999 the Government attempted to tighten the restrictions on those claiming to be self-employed to ensure that the tax they pay is a fair amount in relation to their earnings. Thus, where a person is 'under the supervision, direction or control' of their client (or of a number of them) then they will be assumed to be an employee of that client and be subject to tax and national insurance deductions on the amount that they charge. This is to ensure the State receives an appropriate amount of tax – it does not necessarily create an employment relationship. The only body that can determine that, if it is challenged, is an Employment Tribunal. In recent years, the Inland Revenue has constantly sought to bring more 'self-employed' workers within the PAYE tax net regardless of their status. Their practice note IR35 requires those who use workers who have formed a company to market their (sole) services to deduct tax and national insurance contributions when paying them. In the High Court the Revenue's attitude was criticised but IR35 remains in force.

Case study

In *Tilbury Consulting Ltd v HM Inspector of Taxes (Gittings)*, because Roger Tilbury had the right to send a substitute (for himself) to his clients, and the latter could not tell him how to do the work and neither did it have operational control over how the project was undertaken, then he was not (as the Revenue tried to claim) a 'disguised employee'.

Non-employees

Those who perform personal work for the Organisation who are not employees are workers – operating under a 'contract for services' – whereas employees operate under a contract of service, written or implied. Non-employees or psuedo-employees still have rights.

1. Access to the tribunal system is not limited to employees. An applicant for a job as well as someone who works under a contract for service can still use the tribunal system to claim discrimination, breach of statutory rights (e.g. not being paid the correct amount), etc.
2. Homeworkers, regardless of their status, have the right to be paid at least the National Minimum Wage.
3. Those who provide a personal service to an Organisation and are not running a 'business' may be entitled to the appropriate proportion of annual statutory holiday.

Case study

In *Byrne Brothers (Formwork) Ltd v Baird & ors*. Mr Baird and his colleagues each signed a subcontractors agreement to provide carpentry services to Byrne Bros. The contract stated that they were not entitled to holiday pay. However, when the contract came to an end and they were not paid for any holiday, they challenged this in a tribunal and at the EAT gained confirmation that they were entitled to be paid for holidays.

4. Workers, unless they sign an opt-out (or are genuinely self-employed), are required to comply with the provisions of the Working Time Regulations – that is not to work more than 48 hours a week.
5. The obligation on an employer to provide a safe place of work for employees applies similarly to other non-employees working on (and visitors to) the premises.
6. A person working on a Fixed Term contract which is comparable to that being worked by a permanent employee is entitled to the same rights as that employee.

Agency staff

Most employers needing coverage of a job will use a 'temp' supplied by an Agency. Care needs to be taken with such workers to ensure employment is not created unwittingly.

Case study

In *Motorola v Davidson*, Motorola requested that an Employment Agency supply them with a temporary worker. They sent Mr Davidson. Motorola were unhappy about Mr Davidson and started giving him warnings about his performance. In addition he was required to wear a Motorola uniform, obey their rules, his holiday dates were determined by the company and so on. Since he was unsatisfactory, ultimately Motorola 'dismissed' him. He claimed unfair dismissal. An ET, who had first to decide if he was an employee, found this was the case since Motorola had 'created an employment relationship' by treating him as if he were an employee – particularly by disciplining him.

Of course Motorola should have asked the Agency to remove him and supply someone else – shortcuts in employment administration tend to lead only to lost cases in a tribunal.

Comparability principle extension

In the near future Mr Davidson might be entitled to the same rights as other employees, since the EU is proposing that temporary agency workers should have the same rights as (i.e. to be treated no less favourably than) comparable permanent employees doing the same work – unless such different treatment can be objectively justified. This requirement is subject to a 6-week qualifying period which UK employers organisations have described as unworkable and are attempting to extend the qualifying

period to 9 or 12 months. Temps who are employees of the Agency supplying them would be exempted from these requirements – but no doubt their Agency would reflect their additional responsibilities in the fees they will charge. The exact status of such workers should be clarified prior to the assignment.

Regulating Agencies

The Conduct of Employment Agencies and Employment Business Regulations (effective 2004), require Agencies to:

- set up a 'hiring extension option' so that employers who wish to employ workseekers (as temps are described) do not need to pay a fee to the agency unless this is specifically covered in the contract between the parties;
- ensure that workseekers' cvs are not circulated indiscriminately;
- introduce clearer contracts to demonstrate that workseekers understand that they are employed by the Agency, although their pay may be required to be paid to them directly by the client;
- prohibit the practice of agencies which do not pay anything where a workseeker is sick, or withhold pay until the client has paid the agency;
- prohibit agencies from publicising purely speculative positions (i.e. only genuine positions can be promoted);
- ensure agencies control clients accounts properly when dealing with work seekers earnings.

The underlying aim of these regulations is to increase permanent employment by reducing the number of agency-supplied workers. There are currently 1,000,000 such workers in the EU – 700,000 in the UK.

Contracts tainted by illegality

Some workers (including employees) prefer to 'live outside the system', in other words they do not wish to pay tax and national insurance on their earnings. Whilst it is possible for them to gain agreement of the paying Organisation to pay in cash without deductions (i.e. outside the payroll system) this has a number of implications:

a) The employing Organisation breaches income tax law and can be made liable for the tax which should have been deducted and paid over.

b) The worker is similarly liable to the tax authorities.

c) Whether the worker is an employee or not, should they then try to bring a case against the Organisation, since the 'contract' is tainted with illegality it becomes unenforcable and thus, the person cannot pursue a claim in a tribunal.

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Qualifications

Basis for inclusion

Commercial advisability

Background

When recruiting an employer relies on information, mostly derived from applicants themselves who have a vested interest in the success of their application. It has been estimated that over 50% of people do not complete application forms accurately. This is particularly the case in terms of claims regarding qualifications or skills, since applicants know that the likelihood of such claims being checked is remote.

Precautions

This is so even for senior jobs – an executive selection agency found that around 11% of those applying for jobs paying £50,000 p.a. or more, falsified their qualifications in some way. In RECRUITMENT it is suggested that all appointments should be made conditional and subject to:

a) a probationary period;

b) receipt of a clear criminal record; and

c) receipt of REFERENCES satisfactory to the employer.

This might be refined to gain confirmation of qualifications claimed.

Suggested requirements

1. Requesting with their Application that applicants submit evidence of qualifications. Alternatively, it could be stated on the application form that it is the policy of the employer to check claims.
2. The declaration on the application form that all information is accurate could be extended so that applicants specifically stipulate that all qualifications claimed are valid. A warning could be included indicating that fraudulently claiming qualifications is gross misconduct.
3. Requiring the applicant to provide details of all previous employers for, at least, the previous 6 years so that REFERENCES can be taken up, and indicate that the employer's policy is to take up all references. A survey by accountants Ernst & Young revealed that almost 50% of the UK's largest employers experienced at least one fraud in an 18 month period and 70% of these involved employees, mainly staff whose references had not been checked.
4. Stipulate that not only are qualifications checked and false claims will lead to dismissal, but also that if the employer has suffered loss as a result of the appointment, that damages may be claimed against the applicant.

Study leave

It is very often in the interests of the employer that employees should be qualified either on recruitment or follow certain courses during employment. To that end many, particularly larger, employers encourage employees to undertake courses of study allowing paid or unpaid time off, making a contribution to books, examination fees etc. Since 1st September 1999, employers are legally required to allow 16-18 year olds paid leave to continue their studies where they have not achieved the required level of attainment, namely:

- 5 GCSEs grades A-C; or
- one intermediate level GNVQ or GSVQ at level 2; or
- one NVQ or SVQ at level 2.

The time off must be reasonable 'in the circumstances' and subject to the requirements of the business. The costs of the course of study are not required to be borne by the employer and employers allowing time off should check that the employee does actually attend the course (since no doubt some employees will try to abuse the right).

Included in the detail of the 2002 budget were proposals to offer free training courses for employees who lack basic or level 2 NVQ qualifications and to introduce an entitlement for employees to have paid time off to attend such training and to give employers a right to claim compensation for the time involved in allowing employees to attend such training. Such claims are inferred to be offered to small employers at a rate of 150% of the actual wage costs of those involved (to provide recompense for the possible increased costs of providing alternative cover).

Employers must also allow paid time off for Union Learning Representatives (ULR). ULR's (who have to be nominated by their Union to the employer) are expected to give advice, information and encouragement about training and learning to other employees. However, each employer can formalise the manner of the provision of such advice – and set down the time allowed for such work – and if required to set up such a system would probably be wise to do so. The Code (published by ACAS) suggests the advice sessions should be held in private.

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Quality circles

Basis for inclusion

Commercial advisability

Background

Over the past 20 years there have been a number 'employee involvement' initiatives – BS5750, ISO9000, team briefing, Investors in People, cascade briefing and Quality Circles etc. Sometimes these have been introduced virtually as fashion accessories – there are more than a few employers, qualified for Investors in People recognition, who do anything but invest in their people – or even communicate with them. The last phrase summarises the underlying advantage of all these initiatives – if employers and employees have open, sincere and real COMMUNICATION, regardless of the aims of the process, progress will be achieved. Of course if there was effective communication and consultation these initiatives would be largely unnecessary.

Demand

To around 75% of the average employer's workforce, the need to know what is going on within their employer's business is real and failure to provide this negates efficiency and productivity – and thus profitability.

Information sought by employees

Information required	Number	%
Future plans and policies	165	59
Detailed financial information	128	46
Sales/order books	79	28
organisational details	72	26
Pay and conditions	64	23
Personnel	46	16
Productivity/wastage/quality	37	13
Health and Safety	22	8

Results of a recent survey asking employees what they most wanted to know.

Generally most employees want to know most about things related to their own part of the Organisation and where they fit into the overall body. The high score given above to requirements for detail about the future is also understandable. Ironically these preferences are items on which there will probably be least available information.

Means of providing information

During a series of 'personal skills' training seminars held throughout the UK between 1997 and 2004, around 2000 employees (mainly supervisors or more junior staff) from a variety of companies were asked by the author to rate their preferred methods of in-company communication.

Employee communication-means preferences

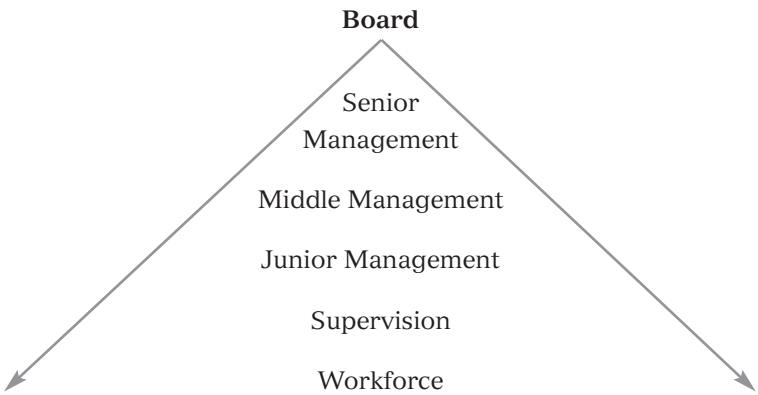
1. Face to face personal interview with immediate superior – over 80% preference
2. Small briefing (that is up to 20/25 people) within department – around 30% preference

3. Larger inter-departmental briefing – around 15% preference
4. Written information – 10% preference if this was the only means used. Since this is the way the vast majority of information is disseminated we have the situation that the way fewest people wish to receive information is the way that most do.

Cascade briefing

The principle of cascade briefing (as advocated by the Work Foundation, formerly the Industrial Society, under its then charismatic Director, John Garnett) is that people with the ultimate responsibility for generating employee communication are senior management and that, starting with them, information should cascade through the Organisation like water flowing downhill.

Cascade briefing



Using the cascade process senior management brief middle management who brief junior management who brief supervision who brief employees. Whilst this may be fine in principle, it can founder if not introduced properly and/or if a number of the suppositions on which the process is built prove false.

The suppositions are that everyone is:

1) committed to the principle;

2) able and willing to brief adequately;

3) able to answer the questions that the briefing session will generate; and

4) are prepared to remove all barriers to the disclosure of information.

Unfortunately some, or all, of these may not be valid since:

a) There can be a resistance from some managers to both the principle and practice. Forcing someone to carry out a procedure will not necessarily ensure that it is carried out effectively.

b) Few people are natural communicators and messages can become distorted either if the speaker does not understand the matter fully, or cannot deliver the message in a clear way – i.e. in terms capable of being understood by the audience. A report from management consultants, the Khalid Corporation, stated that directors rate public speaking their most daunting business activity and that:

'people in business need presentation skills to be successful but there is still a lot of fear around this area.'

Lorna Sheldon, Managing Director of The Complete Works, comments:

'Often their delivery lets them down but they don't have people around them to tell them that, so they continue to bore audiences and fail to motivate staff.'

c) Some managers hoard information (not least to preserve their power) and dislike passing it on.

d) Where the subject matter is particularly complex and not fully understood by the briefer it is very unlikely that they will be able to convey it correctly, let alone answer questions which are an important part (in many respects the essential part) of the briefing process. Faced with questions they can either try and bluff their way out or admit ignorance and need to refer back. This the briefer may feel is a reflection on them, i.e. they may feel that having to say 'I don't know' undermines their authority.

Message transmission

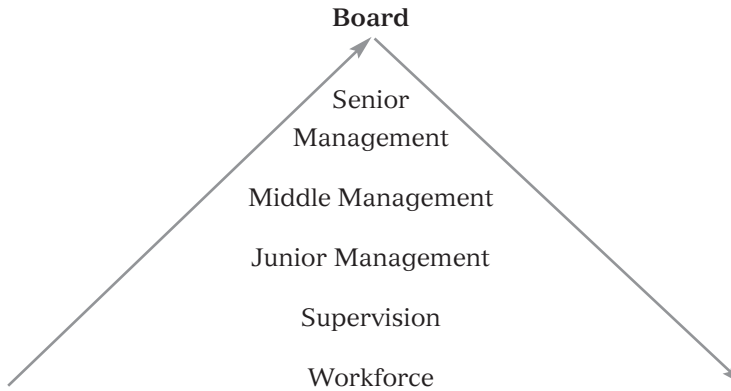
However, the major problem of the whole process is the fact that messages can be misconstrued in repetition. Making oneself understood can be difficult at the best of times but when one's message needs to be passed through several intermediaries, almost inevitably it will be misinterpreted, misconstrued, and/or misunderstood. It is generally accepted that each time a message is passed on between 15% and 25% of the true meaning will be lost. Unfortunately this does not mean the message simply becomes shorter. Whilst this would not be ideal, at least 75% of the message might get through. What can occur is that inaccurate or imprecise data and/or opinions is/are substituted for the 'missing message' passages in order to make up something similar to the original volume. If this were not serious enough, at least it assumes that the parties who misconstrued the message genuinely wished to pass it on. In some cases those involved may deliberately distort or suppress part or all of the message. Even with the utmost commitment to the truth it is difficult to repeat other than the simplest message in the way intended by the originator. This simple truth reflects the inherent danger of cascade briefing. However, it can be made even worse since delegating communication empowers those down the line with the opportunity, should they wish, to filter and skew the messages deliberately. In addition, any feedback or return messages also run the risk of being mangled in repetition, if not similarly filtered.

Each of the problems highlighted above can be overcome by adequate training which itself underlines the necessity for any such procedure to be introduced only after all involved have received training in making presentations and dealing with questions. This discloses another problem – that cascade briefing's greatest value (that of disseminating information to a large number of people in a short space of time by using the management chain of authority) is also its greatest weakness. The process begs questions – and these need answers. We need a 'reverse cascade' by which such questions can 'flow up' to the Board, and that answers and further information can 'flow back'.

Even then, some managers may 'filter out' questions which they feel may reflect badly on themselves or they concern matters they do not want discussed – or known at a more senior level.

It is easy to get water (but not necessarily information) to flow downhill – it may, in this context, be virtually impossible to get it to flow uphill yet the whole point of briefing is to do just that. A one way flow is not communication – it is merely information, without any evidence the information has been understood or even received. To generate good communication (and thus encourage commitment and motivation to help achieve the aims of the process) a two way flow is essential.

Reverse cascade



Senior management briefing

Combating the inherent problems of the cascade process by setting up an effective 'reverse cascade' can pose so great a logistic problem that it may be preferable rather than using the cascade, to appoint one senior manager to carry out all the briefings on a regular basis. This has a number of advantages:

- The quality of the various briefings is more likely to be even.
- The message is likely to be the same on each occasion.
- The briefings themselves may gain in prestige by being conducted by a senior manager or director.

- By virtue of their seniority and personal knowledge, the briefing manager/director should have personal access to all information which should allow them to answer most of the questions posed and/or can revert back individually to those which they have no immediate answer having carried out further research.

Conversely, the fact that the briefings are being conducted by a senior manager may stifle some contributions and great care needs to be taken to preserve the authority of the intervening levels of management. At least, the process should demonstrate to the employees the genuine interest of senior management which may have a beneficial effect on morale and commitment – and thus, involvement and enhanced performance.

Team briefing (TB)

These are the most favoured type of briefings particularly if, in addition to a little time being spent on 'corporate' matters (again comprehension of corporate matters may need to be assisted by means of the provision of a written management brief), there is additional time to consider more local items – particularly those of keenest interest to the participants. Since much of the subject matter is of direct interest to the employees – their own work and problems and difficulties related thereto – and the interface is with their immediate superior, they are less likely to be deterred from speaking out. In all kinds of briefing the input of the leader is essential, but this may be more of a challenge for leaders of team meetings since they are likely to be supervisors untrained in giving presentations. All those running such sessions should be trained. The training of supervisors (and all those responsible) should not only address the principles of giving presentations but also provide guidance regarding effective methods of encouraging interfacing by encouraging questions.

The Work Foundation conducted a survey ('Team Briefing – Managing Best Practice') of employers using TB. 62% of respondents felt it was effective in their organisations. The methods for receiving feedback from employees who must feel that comments will be responded to was determined as an important facet. Feedback from TB is seen as the most effective listening method by 75% of respondents.

Quality circles

To a large extent, if used properly, all the above two-way processes are 'quality circles' since it should be in everyone's interest that the best means of attaining the output of the Organisation should be used. Employees ideas are invaluable in this regard – after all, assuming they are doing the job reasonably well or better, who knows better than the job-holder how to do the job and the problems inherent in it? So, if there are proposals to change the procedure, process etc., the job-holder's ideas should be the first to be sought. In the same series of seminars referred to above, I asked each session whether they had ever been in the situation where a process they were performing had been changed without them being asked for their views. On every occasion there was at least one person with such an experience – and usually a story to recount of the great difficulties that had been experienced in implementing the changes, usually since the decision-maker had not appreciated the detailed problems inherent. This is the epitome of managerial arrogance – the assumption that management knows best and doesn't need to ask is a dangerous fallacy. If we ask the jobholder for their views and if at least some are accepted, we gain from the job-holder 'owning the changes'. They are then more likely to help the change work. To no small extent one of the greatest challenges for management in the 21st century is the management of change.

One does not need a fancy title to take the obvious (and well-mannered) approach, when there are changes required, of at least asking those tasked with implementing the changes for their views. Good ideas are not the monopoly of management. Quality circles are all about involvement – in essence about COMMUNICATION and consultation with and motivation of employees. Without genuine communication it is unlikely that real progress can be made. Management may have many valid messages to relay to their employees but it is only if they are prepared to listen that they will derive real value from the process – employees very often have excellent ideas and SUGGESTIONS if only someone will listen.

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Recruitment

Basis for inclusion

Commercial advisability.

Background

The correct mix of skills and experience an employer needs can only be obtained properly and efficiently if there is a continual assessment of the skills required. From this assessment and from the short-term vacancies created on an unplanned basis, those responsible for recruitment can operate a 'sourcing process'. They must not only be trained in all aspects of interviewing etc. but also need to ensure there is no discrimination in the process. Setting up a suitable monitoring scheme (with attendant spot-checking for compliance) which records all applications and their progress/disposal, with brief reasons, may be advisable.

Recruitment plan procedure

The following would be usefully sourced:

1. A manpower chart reflecting the expected needs of such department (for each department).
2. A management succession plan showing the skills required and expected to be available in (say) 3 and 6 years time.
3. A training plan showing those employees expected to participate and the level of skills attainment anticipated in each case.

4. A skills requirement analysis for each department, taking into account the data generated by items 1 – 3 above.
5. The shortfalls in order to ensure adequate skills supply to meet the requirements of the business plan.

Management succession planning

A corporate plan should address not only where the organisation business is going but also who is going to take it there. Management succession needs to be planned at least over the length of the plan. A time span that reflects the greater time needed to develop or source managerial skills should be used, although given the rate of technological change, constant updating may be necessary. Irrespective of Organisation size, replacing a key executive can take a considerable time – often the chemistry of relationships with other executives is as important as the range of skills and experience, which may militate against a number of otherwise suitable candidates, and thus prolong the recruitment process.

Departmental skills plan

Additional planning is needed for each department, particularly when changes are anticipated. It becomes not just a question of assessing the numbers of 'pairs of hands' required, but a far more complex assessment of the range of skills as well as the numbers required.

Example of personnel requirement projection

	Now	End Year 1	End Year 3
Manager	1	1	1
Technician	–	1	3
Systems analyst	1	2	2
Administrator	–	–	1
Clerks – Grade 1	3	4	2
Grade 2	6	4	4
Grade 3	10	12	1
Secretary	1	1	-
Operators	4	6	8
Data Preparation	8	10	2
Total establishment	34	41	24

Strategy

1. By end of current year commence full computerisation of order entry.
2. By end year 2 complete computerisation and discontinue double running.

Recruitments/skills requirements

1. Need to recruit/retrain 3 technicians, 1 systems analyst, 1 administrator (query re-train secretary?), 4 operators.
2. Need to lose 12 clerks (query re-train 4 as operators?). 1 secretary (see above), 6 data preparation clerks (assuming 2 of year 1 establishment are temporary), etc.

Not only has the establishment of this department altered virtually beyond recognition in the long-term, but so too has its skills composition. Due to the introduction of technology, instead of a large number of relatively unskilled personnel (who might be relatively easy to recruit, and then train

in-house), the establishment demands a smaller number of more skilled personnel. The latter are probably more difficult to recruit and may need a longer training period – hence early realisation of recruitment needs is essential.

Updating

Unfortunately such planning has a dynamism in that the base is always changing – people resign, die, relocate. Some face trauma in their lives which preclude them from progressing – indeed they may even prefer to off-load some or all of the responsibility they have. In addition, the adoption of an APPRAISAL scheme will also determine training and recruitment needs, whilst almost inevitably some requirements will be virtually unexpected. Thus, plans of this nature need to be kept fluid and constantly updated.

Employee requisition

Even in small organisations, where it may be thought that such is the 'recruiter's' intimate knowledge of the jobs, that setting down the requirements on paper is unnecessary, experience shows that the more thought that is given to the exact requirements of the job, and the skills and experience required of the applicant, the more successful recruitment and appointment are likely to be.

EXAMPLE OF EMPLOYEE REQUISITION FORM

Job title _____

Grade _____

Dept _____

Reports to _____

Is reported to by_____

Job objective _____(Attach Job Description)

Reason for recruitment

Present holder leaving/promoted* _____

Duties redefined* _____

New post* _____

Other (specify) _____

Recruitment source suggested _____

Appointment needed by _____

PERSON SPECIFICATION

	Essential	Desirable	Actual
1. PHYSICAL ATTRIBUTES			
Health			
Vision			
Appearance			
Other			
2. QUALIFICATIONS			
Read			
Literacy			
Numeracy			
GCSE			
Vocational			
Academical			
Professional			
Other (specify)			

	Essential	Desirable	Actual
3. INTELLIGENCE			
4. INITIATIVE			
5. APTITUDES			
IT skills			
Typing (wpm)			
Shorthand (wpm)			
VDU operating (rate)			
Telephone			
Technical			
Other (specify)			
6. SPECIAL CHARACTERISTICS			
Team member			
Reliability			
Mobility			
Commitments			
Training required			
Other (specify)			

REMUNERATION

Salary: £_____ p.a./p.w. Review: _____

Package: _____

Contract: _____ Hours: _____

Start date: _____

Recruitment approval: _____M.D. _____Date

Review meeting approval: ._____M.D. _____Date

PROCEDURE:

1. Departmental head completes form in liaison with [personnel administrator].
2. Form submitted to [Managing Director- MD] for authority (no alteration to approved terms without new authority).
3. Once preferred candidate known, complete Actual column and re-submit to MD.

Obtaining an updated JOB DESCRIPTION is essential not only so that the recruiter knows what is required, but also so that the person recruited, who will be required to sign the job description, knows what will be expected of them. With such data being available from the start of the recruitment, the likelihood of appointment failure should be reduced. Some person skills will also be disclosed by the job description, others will require establishing by the departmental head in conjunction with the recruiter. The assessment of such skills may need discussion with other departments with which the recruit will interface.

Some departmental heads may prefer to conduct their own recruitment. In smaller organisations, this may be preferable, although it can lead to a fragmentation of control of the process (as well as meaning everyone responsible for recruiting needs briefing regarding avoiding discriminatory practices), and even if the department actually carries out much of the interviewing, it may be preferable for a single person to oversee all recruitments to ensure continuity of approach (particularly as regards compliance with legal requirements and communication of the remuneration package, etc.), and that all the paperwork governing a recruitment is both prepared and effected in a standard format.

Vacancy specification

With the benefit of an updated and accurate job description and a completed requisition form, the recruiter may have sufficient information to commence the recruitment process. However, certain information – particularly related to the department, career prospects and the Organisation – may be lacking and, unless this information is fairly standard, it may be helpful to support the information on the Requisition form by the preparation of a Vacancy Specification comprising:

- a synopsis of the position vacant;
- details of any training programmes to be undertaken;
- details of any career path envisaged;

- full supporting details regarding the Organisation, department, etc.; as well as
- any special requirements connected with the application procedure.

Example of vacancy specification

Job Title _____

Grade _____

Dept._____

Sex (only applicable if genuine occupational requirement can be demonstrated).

Experience (specify minimum requirements):

_____

_____

Department: Objective, duties etc., set out in detail

_____

_____

Career path: Details of possible promotion and skills required (research indicates that in certain jobs, applicants will wish to know what arrangements are available for training and advancement)

_____

_____

Staff: Grades, range of responsibilities, etc.

_____

_____

Training anticipated: Details

_____

_____

Method of application required: Specify (Some employers will wish to see a personal letter for handwriting analysis, whilst others may prefer all to complete a standard application form so that comparison is rendered more simple.)

_____

_____

Likely recruitment sources: Specify

_____

_____

Recruitment sources

1. **Promotion from within**: although this may solve the vacancy in one department, it usually creates a recruitment requirement elsewhere, and may also require a training input to the person promoted. In addition, the promotee may also need a trial period following which their progress will be assessed. Although promotion from within is to be encouraged to some extent, unless outside sources are also utilised, constant internal promotion can cause innovation to be stultified, and development restricted.
2. **Personal introduction from an existing employee**: this can be a useful source although it has potential dangers (of reputation) to existing employees, who need to be advised that whilst not liable for the actions of the recruit they introduce, nevertheless they are, at least to a certain extent, acting as their sponsor. This process can also lead to the introduction of spouses and other relatives into the Organisation, which can cause friction, particularly if they operate at different levels of authority. Introductions are often linked to a reward – a sum of £50 or £100 being paid to the existing employee, provided both that employee and the new recruit are in employment, for example, six months after the recruit commences work. The Commission for Racial Equality has indicated that it believes that such schemes could be discriminatory since they tend to perpetuate the ethnic composition of the existing workforce. To avoid any such allegations, employers using such schemes should check for bias or ensure that at least some vacancies are offered externally.
3. **Advertising vacancies on external notice boards**: whilst this is an inexpensive source, the effect of constantly having vacancies advertised outside the premises should be borne in mind – it may create the impression that the Organisation cannot retain its employees.
4. **Mailing list**: created by those applying to the Organisation seeking a position, or of previously unsuccessful, but suitable, candidates whose details have been retained for the purpose. To use any or all of the above four sources, the recruiter needs to provide details

on internal/external notice boards or by means of a circular. Whether the salary and/or benefits are shown will depend upon policy. In many larger organisations all jobs (and the pay/benefits related thereto) are graded and thus, the grade can be stated. Other organisations, and/or those who prefer not to publish salaries openly may be able to use a form of words such as 'will be of interest to those currently earning £XXXXX' – although even this gives a guide to the salary likely to be paid.

5. **Job Centre**: for vacancies to supervisory level the national Job Centre Organisation can be effective. An increasing number of managerial jobs are also processed via these centres, although there is a reluctance on the part of some potential recruits at this level to register, which may mean that the target audience is restricted. The job, person, reward structure needs to be developed and discussed with the local Centre. If it is to be used regularly, it may be possible to provide it with the organisation application form for completion and, once there is a good working relationship, and it is clear the Centre understands the requirements of the Organisation, with copies of the vacancy briefs which the Centre interviewer can use to screen applicants.

6. **Employment bureaux/management consultants**: the range of such staff appointment facilities is very wide, covering every level of job from unskilled labourers to board level appointments, and every length of requirement, from a few hours on a single day for purely temporary staff, to service contracts lasting some years. The recruiter will need to send details to the bureau for comparison with their applicants, or to discuss the sourcing with a consultant who, with more senior jobs, will usually wish to visit the Organisation and obtain a range of additional information before starting a search. Bureaux used continually by the Organisation can be given a supply of application forms and, where there is an understanding of the exact requirements, encouraged to screen applicants. A recruitment campaign for senior personnel will usually entail national, and/or professional journal, advertising – the costs of which will normally be in addition to the fee charged by the bureau/consultant retained. A full estimate showing details of the fees and other charges should be requested when retaining the bureau, etc., and a budget agreed for the recruitment costs.

Although screening interviews will be conducted by the bureau/consultant, subsequent interviews are usually conducted at the organisation own premises. Some of these organisations provide a headhunting service (see below).

7. **Advertising**: by handbill, or local, national, trade or professional press, by local commercial radio or television.

Headhunting

When recruiting for senior positions, where there are exact requirements and possibly only a small potential labour pool, recruitment consultants (or headhunters) can be used to compose, and approach, a short list of candidates currently working in an environment thought to provide them with the range of experience likely to equip them to deal with the vacancy identified.

Such personnel may not be actually seeking a new position, which may put them in a marginally stronger position when it comes to negotiating the remuneration package and thus, those using this form of recruitment should be prepared to pay more than they might otherwise have to do. The job, person, reward synopsis will need to be very detailed and specific, and may need to include a comprehensive range of enticements for the ideal candidate – so-called 'golden hellos'. Essentially there must be an enticement to tempt the person from a situation from which they might not otherwise have considered moving. Although it may be desirable to make the criteria for the required appointee as tight as possible, in order to reduce the number of unwanted applications, this can have the effect of deterring some otherwise potentially suitable candidates from applying – thus, requirements should be made realistic without being restrictive.

Headhunting is a form of recruitment quite widespread in the USA, and on the increase in the UK – it has been claimed that only 25% of the top jobs are actually advertised. This does not necessarily mean that 75% are headhunted, since many are filled by promotion, and others by personal contact emanating from within organisations but a considerable proportion are filled by a process of headhunting.

Precautions

Since it is possible for those applying for a position to claim they have been discriminated against, those interviewing to fill vacancies should not only be trained to avoid discrimination but at every stage in the process details should be noted in a permanent record. Thus, such a record could contain details including all applications received, details of those selected (and the basis of selection) for interview, details of those short-listed and the basis of selection, details of the eventual successful applicant and the reasons for not offering the position to others short-listed. If this process and records are regularly inspected by a senior manager checking to ensure there has been no bias and selection was made on the basis of experience, skills and likely ability to perform the tasks required, it should provide a defence against potential discrimination claims.

WARNINGS

a) Legal compliance

Employers are required to check before employment commences that all applicants are entitled to work in the UK by asking for documentary evidence. Under the Immigration (Restrictions on Employment) Order 2003 the appropriate documentation is limited to:

- passports (with correct certification for foreign nationals, i.e. a right to work);
- EEA identity cards (or the UK identity card when introduced);
- UK residents permits issued to EEA nationals; or
- Home Office issued residence permits.

If none of the above are available an applicant must provide two of the following:

- A full (not short-form) UK birth certificate.
- Certificate of registration or naturalisation or letters from the Home Office.

- Employment approval documents issued by Work Permits UK.
- Evidence of a National Insurance number (e.g. a P45 or P60).

(Note: The short-form birth certificate is provided free on first registration. If the long certificate, which as well as name, sex, and date and place of birth provides details of parents, is required this costs £3.50 on first registration but £7- £8.50 later and £11 if the general register office number is unknown.)

This applies to ALL applicants, not just those who appear to be or are immigrants. Thus even a person who has previously worked the whole of their working life in the UK needs to comply – they should be able to produce a passport but if not, they will need a full birth certificate as well as a P45 etc. Employing a person with no right to work is currently subject to a £5,000 fine which is likely to be increased substantially in the near future.

It may be advisable to take copies of the documentary evidence supplied and to sign and date the copy before placing it in the employee's personnel file.

b) Practical protection

It is reckoned that in the average organisation 25% of employees are honest, 25% are dishonest and the remaining 50% are as honest or dishonest as the organisation allows them to be. (See THEFT). It may be advisable to make all recruitments subject to:

- a PROBATIONARY PERIOD (with employment subject to a week's notice during such period)
- REFERENCES satisfactory to the new employer, and
- receipt of a basic certificate from the Criminal Records Bureau (which should be available, with the permission of the applicant, from end 2004).

Without the applicants agreement to each, the recruitment process may be safest abandoned.

Blank

Redundancy

Basis for inclusion

Legal obligation

Background

The pace of technological development and variation of economic factors are such that change is the only constant. Most employers will, at some time, need to lose staff. Generally the handling of redundancies leaves much to be desired and few employers manage such situations with the tact and humanity it demands.

Commentary

All employers are obliged to consult with employees, or, if there are more than 20 to be made redundant within 90 days, elected representatives of their employees (whether unionised or not) in good time **before** redundancies are decided. Where there are no elected representatives then an election needs to take place. Redundancy IS a dismissal, but it is a dismissal for which the employee is in no way culpable – and employees should not be treated as if they were culpable. In addition, the effect on those not being made redundant must also be assessed and managed in the interests of the future operation of the Organisation.

Policy

Devising a redundancy policy before it is needed may be helpful. When redundancies are required, a number of key aspects should have already been addressed. Consultation may then be more about alternatives, recompense and choice rather than principles.

Draft redundancy

1. It is our aim at all times to maintain full employment for all employees, and to assess labour requirements continually for as far in the future as possible. It is impossible always to accurately forecast product demand, and the labour required to achieve the output to satisfy this demand, and thus it is impossible to guarantee full employment, and should demand reduce unexpectedly, the hours and/or the workforce may need to be reduced.
2. The manner of achieving a reduction will be at the discretion of the management in consultation with elected representatives of employees who will examine all alternatives as well as to discuss the manner of conducting the exercise.
3. Management and representatives will determine the basis of selection. Whilst reference will be made to the concept of 'last in, first out', and to the preference of any employees wishing to 'volunteer' for redundancy, it is essential that the Organisation retains the level of skills and experience necessary to enable it to compete in changed circumstances.
4. As well as consulting with elected representatives, the Organisation will discuss the situation directly with employee(s) selected for redundancy. Thus, all employees selected for redundancy will be interviewed personally, and any opportunities for alternative working/positions will be discussed with them.
5. The full entitlement to Notice will be given whenever possible, although in some cases, it may be necessary to make a payment in lieu of notice, which will be paid with any pay due (including amounts in respect of holidays not taken etc.) on the last day of work.

6. Whenever possible, we will try to find alternative positions for those selected for redundancy and will expect an employee to attempt such a position for a short trial period. An employee selected for redundancy who unreasonably refuses to try a suitable alternative job, may lose the entitlement to a redundancy payment. Trial periods will last at least 4 weeks, and undertaking this trial will not lose the employee the entitlement to a redundancy payment. An employee's request for one extension of a trial period will usually be granted.
7. Employees who wish to leave before the expiry of their notice, may lose their entitlement to redundancy pay, unless the Organisation consents to them leaving on the earlier date – this decision will be based on the need to maintain adequate labour.
8. Redundancy payments will be made at the rate of [twice] the amount payable under the State Redundancy Scheme. This amount will be calculated using the greater of the average of the last 8 actual weeks pay, or the maximum week's wages figure referred to in the State Scheme, whilst the minimum payment made will be equivalent to [2] weeks average pay.

Note: The State requires a redundancy payment to be calculated in the minimum basis of:

- half a week's pay for every year of service between ages 18 and 22
- a week's pay for every year of service between ages 22 and 40, and
- one and a half week's pay for every year of service between age 41 and retirement.

In the last year before retirement, the amount is reduced by 1/12th for each month worked. The maximum weekly pay under the State Scheme is £270 – February 2004.

9. For employees nearing retirement, the redundancy payment will be restricted to the amount of gross pay they would have received between the expiry of their notice period and their normal retirement date.

10. A statement showing the calculation of the redundancy payment (which is not taxable) will be given to each leaver, together with a note for a future employer, stating from whom a reference can be obtained.

11. All redundant employees will have available the OUTPLACEMENT service offered by the [personnel administrator], which will attempt to help those employees that wish to use the service, to consider their options and to find alternative positions. For 6 weeks following redundancy, all redundant employees who have not found alternative employment, are entitled to attend the outplacement advice session which will be held between 9 a.m. and 11 a.m. each Wednesday at [location]. This service will include access to word processing, photocopying and the Internet (to source job vacancies only), as well as individual assistance by [Personnel] staff to draft application letters and career details.

The purpose of a redundancy payment is to act as a financial support between the lost job and a new job. Hence, if an employee finds a new job and wishes to leave earlier the support is unnecessary – hence the payment may be lost.

Proving a genuine redundancy

If a redundancy dismissal is challenged in a tribunal the employer must prove there was a genuine redundancy. Thus, figures drawn from management accounts, order book etc., will be required. Copies should be provided but the originals should be available. Where management become aware of a downturn in demand or similar which means that there are too many productive hours being paid for on an ongoing basis, they need to assess the number of surplus hours. It may be preferable at this stage not to refer to the excess in terms of people.

Consult

Employers must consult with elected representatives of their workforce if 20 or more are to be declared redundant within a period of 90 days. If fewer than this number are expected, consultation should take place with individuals. Ideally consultation should take place before 'bodies required' have been identified. Representatives should be told the situation and asked if they have any suggestions.

Case studies

In *MSF v Refuge Assurance Plc* the EAT stated that consultation is required to take place only when there are proposals to put forward rather than at an earlier stage when it is making plans which could result in redundancies. This attitude was confirmed in the case of *Dewhirst Group v GMB Trade Union*. This may be felt to be somewhat odd since the EU directive from which the obligation to consult stems, states consultation should take place in 'contemplation of redundancies'.

The point of consultation is that a workforce might have alternative suggestions to achieve the same end. In some instances, faced with some of their number being made redundant, workforces have cut their wages en masse to make the required savings. Alternatively, some full-timers might be prepared to work part time and so on. Those involved should be given a short period (e.g. two/three days) to consider the situation and make any suggestions. There is no need for management to accept the suggestions – they are simply required to consult (not negotiate). Obviously sensible suggestions should be considered but may have to be rejected for business reasons.

Case study

In *Poat v Holiday Inn* the EAT commented 'leaving aside anything else it is courteous and humane to consult people when you are thinking of making them redundant.there is the possibility that the employee may have ideas for ways in which the redundancy can be avoided altogether, so far as he or she is concerned. The employee may be able to make suggestions about alternative employment, may indicate that he or she would be prepared to accept less well-paid work on less-favourable terms, or to retrain for other work, to go abroad even. Or to do other things which would help the employer out in the emergency which arises… These are all matters which might be raised in consultation. Clearly it will be a very bold thing for any employer to say or indeed any person to say "I can dispense with consulting somebody. Nothing that person could possibly say would make me change my mind in any material way." that is a very strong thing to say.'

The EAT stated that consultation was 'giving the [person] an opportunity to understand fully the matters about which it is being consulted and to express its views on those subjects with the consultor, thereafter considering those views properly and genuinely'.

Case study

A company was told by its parent to cut £40,000 from its overheads. They decided to make their Chief Chemist redundant and gave him a week's notice. He was aged 55, had worked for them for 25 years and was on a 4 month contract on a salary of £30,000. Hence when he left a week later they had to pay him 4 months salary and benefits in lieu of the notice to which he was entitled – amounting to £15,000. In addition he was entitled to redundancy pay of £6,000. He then lodged and won a tribunal case on grounds of failure to consult and unfair selection for redundancy. He was awarded the then maximum compensation of £12,000 following a three day case which probably cost the employer around £7,000 making a total cost of £40,000 – the amount they were charged with saving.

Footnote

If only the employer had discussed the matter with their Chemist they could have avoided the whole affair. He would have been prepared to work on a part time basis so that he could increase the hours he was spending teaching in the local University. This is the whole rationale of the consult requirement.

Selection

The manner of selection of those to be made redundant should be another facet of consultation. Ideally the basis of selection should be objective rather than subjective – it should be based on facts already in being rather than assessment at the time. Removing subjectivity helps preserve the appearance of fairness of selection. However, if there is an appraisal or performance review scheme in operation (and accepted by all) then recent scores in that could be used.

Management will also need to determine the 'pool' from which those chosen must be selected. For example, if the sales force (of 25) is to be reduced since only 20 representatives are needed – then the workforce of 25 representatives is the pool and 5 will need to be selected from the current number.

Conversely, if the employer is suffering a diminution in overall demand, savings might be needed from all areas to cut total costs. In that case the pool could be the entire establishment.

The number required should then be selected from the pool in accordance with the selection criteria already agreed. Those selected should be told and given the opportunity for further consultation – for example, if they have had any further ideas or possibly wish to be considered for another job if there are any vacancies.

No one should be made redundant without having been given the opportunity to ask to be considered for vacancies in the Organisation. If they are considered suitable they should be given say a month's trial. If successful,obviously a new (continuous) contract should be issued. If unsuccessful, the original redundancy situation must be resumed.

Notice

Once selected, a notice of termination of employment on grounds of redundancy should be issued. This should state the leaving date and give the amount of notice required under the contract – or one week for each year of service to a maximum of 12 weeks – whichever is the longer. If the required period of notice cannot be given (because the period to the required termination date is too short) then a payment in lieu of notice PILON) must be paid. Unless the right to make a PILON is set out in the contract this payment can be made gross. (If the right to make a PILON is set out in the contract then the amounts are subject to tax and NI.) During the notice period an employee is entitled to all benefits under the contract. If a PILON is made then the cash equivalent of the benefits should be agreed between the parties and paid.

If the employee works the notice they will be entitled to a proportion of annual holiday (if excess has not already been taken). If a PILON is made it can be argued that holiday due is being taken since the employer is not requiring the employee to work their notice so they are being given their holiday. If there is excess of holiday owing then this will need to be paid in cash – and be made subject to tax and NI deductions.

Time off

Those made redundant are entitled to 'reasonable' amounts of paid time off to seek other work and to arrange training for such other work (but presumably not to actually undergo such training – although the employer might be prepared to allow them unpaid time off for the training).

References

Being made redundant often carries a stigma akin to being dismissed for a culpable act. However, a redundant employee has no culpability for their dismissal and for this reason should be treated accordingly. Future employers may well require a reference and arrangements should be made so that those requiring this can source it easily. References must be clear and fair.

Administration

Declaring employees redundant is subject to legal ramifications and obligations and those not experienced in dealing with redundancies should take specific advice in such circumstances. The following checklist covers the subject in the order in which each item should be dealt to create a fair dismissal.

Redundancy checklist

a) determine (provable) excess of productive capacity.

b) consult about position – ask for comments/alternatives/suggestions (and/or make a presentation identifying the alternatives, showing why these cannot be used) – suggestions re choice criteria if terminations needed.

c) consider suggestions and alternatives derived from b).

d) give reasons for not using suggestions and/or alternatives (obviously if some can be used say so and re-assess surplus capacity then left).

e) decide hours/days/numbers now to be lost.

f) identify the pool (the particular area – or the whole Organisation – from which the number to be made redundant are to be drawn).

g) ask for volunteers.

h) identify those to be terminated ideally using totally objective criteria.

i) inform those affected (allowing them to be accompanied if requested) giving notice under contract, details of redundancy payments and right of appeal.

j) advise any vacancies and oversee trial periods.

k) consider outplacement.

l) deal with queries and appeals.

m) re-check calculations (particularly those undertaking trial periods).

n) arrange provision of references.

References

Basis for inclusion

Commercial advisability with potential liability

Background

The observations of a former employer on the subject in a similar job, are likely to be more valuable and objective than application form data. It is customary to apply to previous employers asking them to provide a reference or to complete a pro-forma reference request form. There is no right to demand a request – nor, except in a few areas where separate legislation requires this, to provide one.

Obligations

All references must:

- be fair;
- be truthful;
- not be malicious; and
- be provided with an appropriate degree of care (since a carelessly prepared reference, for example based on the record of another similarly named employee, could mean the employee failing to obtain the job for which they have applied).

Case study

In *Guardian Royal Exchange v Spring*, the House of Lords indicated that referees owe a duty of care to the subject of the reference, and if there is negligence in the issue of a reference the provider may be liable to the subject for damages. Including words such as 'given without legal liability' on the foot of a reference carries no weight.

Given the foregoing it is likely that fewer written references may be given, those prepared to discuss their former employees, using the phone in preference. However, deciding on a one-off basis not to give a reference could be discriminatory.

Case study

In *Coote v Granada Hospitality Ltd* an employer was held to have discriminated against a former employee by not providing a reference for her. The employee had previously brought and won a sex discrimination case against her then employer and, because of this action, the employer refused to provide a reference. The case was referred to the European Court of Justice which held that member states were required to provide protection to employees in such circumstances. Presumably, if the employer decided not to provide references at all, there would have been no discrimination.

Where a previous employer no longer exists – or employer reference(s) cannot be obtained, it may be possible to obtain a personal character reference to substantiate the type of person under consideration. This may also be required if the employer wishes to cover employees by Fidelity Guarantee insurance.

Control

In the provision of references, given the foregoing, it may be preferable to restrict the provision of pro-formas or individual references to one person (conversant with the forgoing), even if that person has to obtain details from individual managers in order to complete the record.

Reference request examples

A. Corporate

Dear _____

[Vacancy] _____

Reference request for _____(applicant's name)

The above-named has applied to this Organisation for the above post and has stated that (s)he was employed by you during the following period:

_____[Dates]

as _____[Job title]

I should be obliged if you could complete the short questionnaire overleaf, and return it in the enclosed envelope. Please either affix your Organisation stamp or a sheet of headed paper to this letter on return. If you would prefer to telephone me to discuss this, or to write a reference in your own words, please do so.

Yours etc.

QUESTIONNAIRE

Applicant

1. Are the dates given correct? YES/ NO*
   If NO – please advise correct dates.
2. Is the job title stated correct? YES/ NO*
   If NO please state correct title.

   In either case please give a brief outline of the duties, level or responsibility, employees controlled etc.

   _____

   _____

   _____
3. Reason for leaving?

4. Would you re-employ?

_____

5. As an employee was (s)he:
   - Trustworthy? YES/ NO*
   - Reliable? YES/ NO*
   - Honest? YES/ NO*
   - Punctual? YES/ NO*

6. Please rate his/her work/characteristics:
   - Quality: Good/ Average/ Poor*
   - Quantity: Good/ Average/ Poor*
   - Dependability: Good/ Average/ Poor*
   - Relationships: Good/ Average/ Poor*
   - Attendance: Good/ Average/ Poor*

7. Did (s)he have good control of staff? YES/ NO*
8. Did (s)he maintain discipline and control? YES/ NO*
9. Would you assess him/her as being capable of the position we have vacant? YES/ NO*
10. Any other comments?

_____

_____

_____

Signed _____ Date _____

Position _____ Organisation stamp _____

* Delete as necessary

Note: If requesting the previous employer to assess capability for a new position it may be necessary to supply a copy of the JOB DESCRIPTION.

B. Personal

Dear _____

[Vacancy] _____

Reference request for _____(applicant's name)

The above-named has applied to this Organisation for the above post and has stated that (s)he has known you in the capacity of [friend, doctor, etc.].

We need a character reference and I should be obliged if you could complete the short questionnaire overleaf, and return it in the enclosed envelope. If you would prefer to telephone me, or to write your own reference, please do so,

Yours etc.,

QUESTIONNAIRE

Applicant

1. How long have you known the applicant?

   _____

2. In what capacity have you known him/her?

   _____

3. When and where did you meet?

   _____

4. In your opinion is (s)he:
   - Trustworthy? YES/ NO*
   - Reliable? YES/ NO*
   - Honest? YES/ NO*
   - Punctual? YES/ NO*
   - Responsible? YES/ NO*

5. Does (s)he have and use his/her own initiative? YES/ NO*
6. Would you recommend him/her as an employee? YES/ NO*

Signed _____

Address _____

* Delete as necessary

Displaying the facts

Whilst ensuring the reference is accurate is an obvious requirement there is no obligation on the provider of a reference to suppress material facts, even if these are not in the interests of the subject of the reference.

Case study

In *Bartholomew v London Borough of Hackney*, when Mr Bartholomew was suspended whilst being investigated for financial irregularities, he claimed racial discrimination in an Employment Tribunal. He and Hackney concluded a deal when in exchange for Hackney ceasing the financial irregularities investigation, he would withdraw his racial discrimination claim and be allowed to resign. However, on the date of his resignation he was still suspended.

Mr Bartholomew was offered a job by the London Borough of Richmond who applied for a reference to Hackney. Hackney stated the fact that at the date of his resignation he was suspended for financial irregularities. Mr Bartholomew then submitted another claim for racial discrimination but this was thrown out since the reference Hackney provided was an accurate reflection of the facts.

Natural justice

Obviously, only items which are known to and on which the employee has had a chance to comment should be included in a reference.

Case study

In *TSB Bank plc v Harris,* Mrs Harris applied for a job with a prospective employer who applied to TSB for a reference. In the reference TSB included a number of disciplinary matters on which Mrs Harris had not had a chance to prove her innocence (or even to comment). Her prospective employer withdrew the job offer, Mrs Harris resigned and successfully claimed unfair constructive dismissal.

Blank

Rehabilitation of offenders

Basis for inclusion

Legal obligations

Background

Although there is nothing to stop employers asking applicants for details of any criminal convictions, under the Rehabilitation of Offenders Act 1974 certain offences become 'expired' after various periods of time and must be ignored. Other than jobs which are exempt, taking account of an offence after it has been time-expired breaches the Act.

New legislation

To assist employers knowing whether applicants have a criminal record, under the Police Act 1997, the Criminal Records Agency was set up to provide a range of certificates giving details of criminal convictions. The Agency is now able to issue two of the required certificates, with the first certificate expected to be made available by early 2005.

The following certificates are now available:

1. Criminal Conviction Certificates are available to individuals and (with the individual's agreement to employers) give details of all 'unspent' convictions.
2. Criminal Record Certificates available to both individuals and registered employers in respect of occupations exempt from the Rehabilitation of Offenders Act (e.g. those working with children and vulnerable adults etc.).

3. Enhanced Criminal Record Certificates relating to those working on a regular unsupervised basis with children, for licensing purposes and relating to judges and magistrates prior to appointment are available to both individuals and registered employers.

Job offers

The provision of these certificates is a valuable service to employers since they will be able to make job offers conditional on:

- receipt of a satisfactory reference;
- completion of a satisfactory probationary period; AND
- receipt of a clear CRB certificate.

An application from someone who does not agree to a prospective employer applying for a certificate should be discarded.

Policy

1. Where a person applies for a position, the Organisation will not take into account previous time-expired convictions as laid down in the Rehabilitation of Offenders Act and will, should it be made aware of such previous convictions, endeavour to assist in any way possible, the applicant to find and adapt to employment.
2. Applicants should apply to [name] for such assistance, and may do so in complete confidence.
3. Where questions are required to be asked regarding past records, these will reflect the principles of the Act and will thus be composed taking into account the 'time-expired' nature of the offence.
4. Should an employee be convicted of an offence, the circumstance of and type of offence will be considered in relation to their continued employment, before a decision is made regarding retention. If it is felt that the offence is not one which affects continuation of the employment, i.e. it has no bearing on the type of work being carried

out, then employment may be able to continue. If a custodial sentence is imposed, in excess of the time that could be covered by the application of the leave of absence and holiday amalgamation rules, it may be necessary to treat the contract as having been terminated, and, thus, the employment as having ended. However, this will not preclude the employee from applying to rejoin the Organisation on release, when the application will be considered.

5. Managers will familiarise themselves with rehabilitation periods. In the following list the offence is shown first with the rehabilitation period following it. Periods commence with the date of conviction, and if a further offence is committed, the rehabilitation period may be extended.

   a) Disqualification orders, or orders imposing a penalty, etc.: Until the order ceases.

   b) Absolute discharge, discharge by children's hearing under Social Work (Scotland) Act: 6 months.

   c) Remand home or approved school custody: 1 year after cessation of order.

   d) Conditional discharge, care supervision and approved school orders: 1 year from date of conviction or the order ceases, whichever is the longer.

   e) Probation orders (person aged under 18) 2 years from date of conviction or date probation order ceases (whichever is longer) (person aged over 18) 5 years from date of conviction.

   f) Detention of up to 6 months, order for detention in Centre: 3 years.

   g) Mental hospital order: 5 years from conviction or 2 years from the cessation of the order whichever is longer.

   h) Fine or other sentence subject to rehabilitation: 5 years.

   i) Borstal training, detention of over 6 but not more than 30 months, imprisonment or youth custody for 6 months or less: 7 years.

   (j) Imprisonment or youth custody for over 6 months but less than 30 months: 10 years.

6. The following sentences are not subject to the Act and hence do not become spent at any time:
    a) Life imprisonment (and life custody).
    b) Imprisonment or youth custody for a period in excess of 30 months.
    c) sentence of preventive detention.
    d) a sentence of detention during the Sovereign's pleasure.

Note: The Act does not apply to teachers (and anyone dealing with the young), accountants, etc., whose offences must be declared irrespective of the age of the offence.

Drivers

To check a driver's record, questions must be posed in a similar manner related to the offence expiry periods.

- *In the last 4 years have you received an endorsement (or penalty points) for a driving offence?*
- *In the last 5 years have you received a fine for a driving offence?*
- *In the last 7 years have you received a prison sentence of less than 6 months in respect of a driving offence?*
- *In the last 11 years have you received a penalty in respect of a drink/driving offence?*

If so, in each case, please give details.

Applicants should be told that failure to provide accurate answers, will be regarded as gross misconduct since the information provided is the basis on which insurance cover is provided. Inaccurate information may lead to the employee driving without insurance cover and/or the insurer refusing to accept a claim – potentially leaving the driver (and ultimately the employer) to pay costs and/or compensation incurred.

Relocation

Basis for inclusion

Commercial advisability

Background

Businesses move an average of once every 12 years. The process of seeking to relocate employees poses considerable challenges.

Procedure

Before attempting to require an employee to relocate (as opposed to inviting relocation) the exact wording of the employee's contract must be checked. Even if the contract includes a flexibility of location clause this may not give the employer complete freedom. The employer must be seen to act reasonably in terms of timing, distance, etc., in requesting a move.

Case studies

In *Meade-Hill and anor. v The British Council,* the Court of Appeal found that the imposition of a mobility clause into a married woman's contract was discriminatory, since more women than men are secondary wage-earners and thus are more unlikely to be able to comply with the requirement to relocate. The employers were told the clause would be unenforcable unless it could be shown to be justifiable on grounds other than sex.

Case studies

In *Aparau v Iceland Frozen Foods plc*, the company issued new contracts which included a right to require employees to work in locations other than those they were then employed in. Mrs Aparau refused to sign the new contract. When she was asked to relocate she refused and eventually resigned and successfully claimed unfair constructive dismissal.

If the employee is required to work abroad, before the employee leaves the UK written particulars of:

- the term of the posting;
- the currency in which the salary will be paid;
- details of all additional benefits applicable; and
- the terms and conditions governing the return to work in the UK should be provided for the employee. Whether the employee is protected by UK legislation when they work beyond its boundaries is somewhat questionable. Under the Employment Protection Act 1996 (EPA96) it was understood that if an employee worked outside the UK for more than 4 weeks, he would not have the benefit of any of the UK employment protection rights unless these were written into the contract.

Case study

In *Financial Times Ltd v Bishop*, the EAT rebutted the presumption that the EPA96 did not apply outside the UK and stated that each case should be reviewed on its merits, particularly to check whether there was 'sufficient connection' with the UK employer for the employee to claim the benefit of such rights.

Procedure

Draft checklist

1. Notice

At least three months notice of the intent to relocate will be given in writing to those affected. Employees will be told, either that they are required to work at the new location or that they may work there if they wish, or that they are not required to move. Employees will be requested to confirm in writing whether they are interested in relocating within one month from the date of the letter of notice of relocation. When confirming their interest, they will also be required to confirm that they have placed their existing property on the market at a figure recommended by a local agent, or, if occupying leased property, that they have given appropriate notice, and that they have registered their housing requirement with a named agent at the new location.

2. Location inspection

During the month after the notification of the relocation, visits to the new location and its surrounding area will be arranged for all employees considering relocating. Such visits will be supplemented by written data on the area and by interviews with local estate agents, schools, etc., the aim being to give those relocating enough information to enable them to make a decision about where they want to be, which it is appreciated can have far-reaching implications.

3. Specific notice

Once a decision has been made, whether or not to relocate, a further letter will be given to the employee. This will contain details either of the relocation package offered, or of the alternative, which will usually, but not always, be the redundancy terms available.

4. Package

The relocation package (assuming the new domestic location is [say, 5] miles of the new Organisation location) will be fully applicable, provided the new residence mirrors the facilities available at the existing location. Should the employee wish to acquire a property with improved facilities or of a greater size, or a greater distance from the new location, the amount payable under this package will be restricted. The intent is to allow employees to acquire a similar property to that currently occupied, and a similar or less distance from the company facility.

The package includes reimbursement of:

1. the costs (including agents and solicitors fees) of selling an existing property or vacating leased premises.
2. the costs of packing and moving possessions (including any short-term storage involved).
3. any costs involved in purchasing or leasing the new property.
4. a [free] bridging loan from the Organisation for a period of 3 months during the sale of the existing property and the purchase of the new property.
5. travel and incidental expenses incurred in visiting the new area and inspecting accommodation and schools.

All invoices included in items 1 – 3 above must be made out in the name of the Organisation, and will be settled by it.

Notes:

1. Obtaining invoices should enable the company to reclaim VAT incurred, although advice may be needed to ensure this is the case.
2. Those told they are not required at the new location will almost certainly need to be declared REDUNDANT. Those offered the chance to transfer can either have the benefit of the relocation allowance or if they do not want this – they may be declared redundant. If any of those instructed to move (because their contract requires this) resist, the matter will be investigated but this may mean that no redundancy payment is due since they would be in breach of contract. Advice should be taken.

The tax free limit for relocation expenses is £8,000. If higher gross amounts are paid, these amounts need to be declared on Form P11D and tax may be chargeable.

Allowance clawback

Should an employee, having been relocated and received a relocation package, then leave the Organisation voluntarily, any relocation allowances will be repayable as follows (example only):

- Leaving within 3 months of relocation: 100% repayment
- Over 3 months and up to 1 year: 80% repayment
- Over 1 year and up to 18 months: 60% repayment
- Over 18 months and up to 2 years: 40% repayment
- Over 2 years and up to 3 years: 20% repayment

Each employee receiving a relocation allowance would need to sign a form giving the employer the right to recoup the expenses, first from any outstanding payments due to the employee and then from the employees other resources.

Sale difficulties

If a bridging loan facility has been exhausted, but the former residence has not sold, and seems to have no likelihood of being sold, the employee will be required to sell the property to a company nominated by the Organisation, and to liquidate the bridging loan. In the event that the then vendor sells the property at a figure in excess of its purchase price, it is usual for the employee to receive a share of this excess. If the property is subsequently sold for less than the price paid to the employee the difference between the two figures may be treated as a taxable benefit in the hands of the employee. Advice should be taken on the taxation implications of such an arrangement.

Retirement

Basis for inclusion

Commercial advisability with legal implications

Background

Of the two changes in life – from school to employment and employment to retirement – the latter receives less preparation but involves the greater challenge. Retirement requires individuals to move from activity and commitment, which they may have experienced for over 50 years, to inactivity. Increasingly employers provide guidance and assistance to employees.

Pre-retirement preparation

Ceasing to use employees at retirement is to become a more challenging process for employers by 2006 when anti-ageism legislation is to be introduced. One effect may be that employers may not be able to insist on set retirement ages, unless these can be objectively justified (e.g. on safety grounds). This could also mean a far greater number of dismissals on grounds of CAPABILITY. Preparation for the change from active earning life to inactivity (at least in economic terms) cannot be left until just before retirement age – irrespective of the date this is to take effect. Employees should be encouraged to think about and to plan for, the change in their lifestyle well in advance.

Draft policy

Guidance on planning for retirement, is available to employees. We provide informal sessions on the subject and invite all employees to attend these, in company time, when appropriate.

1. Five years prior to what is suggested as a 'normal retirement date' (NRD), employees will be sent an information pack containing a number of handouts, briefing notes and booklets dealing with various aspects of retirement including opportunities, challenges, organisations requiring assistance as well as those that can give assistance, etc., with the aim of provoking consideration of the matter. They will be asked if they are considering opting to change their NRD and if so, to what date.
2. Employees will be invited to a Pre-Retirement briefing – 'The challenge of retirement' – held 6 months after the issue of the brief. This session will:
    a) deal with any questions arising from the brief;
    b) outline the pre-retirement programme;
    c) encourage spouses and partners to participate in the programme;
    d) allow those attending to question Organisation managers responsible for payroll, pensions and allowances, retirement reunions, etc.; and
    e) take bookings (including spouses if preferred) for an in-house pre-retirement course.
4. Around three years before retirement all those who wish (with spouses) will be invited to the in-house course which will provide both general discussions and presentations and individual counselling sessions. The organisation pension advisers will be in attendance to explain options available under the Pension Scheme.
5. If an employee decides to retire early, Personnel will make the arrangements concerning quotations regarding pension options, arrange payment of this and any other benefits payable. An employee who retires prior to the period in which the 'winding-down' leave is paid, will receive a payment equal to 10 days holiday pay for each year of winding down leave not taken.

6. Commencing with the 3rd year before retirement employees (whilst continuing to earn their full salary) will become entitled to 'winding down leave' as follows:

   a) From the 3rd anniversary prior to the date of retirement, employees will be required to work only 4 days each week.

   b) From the 2nd anniversary: 3 days per week.

   c) For the last full year to retirement: 2 days per week.

   During this period the Organisation will adopt a pro-active role to provide guidance and assistance if requested. For example, should the employee be considering commencing alternative work, or setting up his own business, every effort will be made to allow the promotion of the business, and the clause restraining employees from other employment whilst working for the Organisation will be waived.

7. A year before retirement, when the final salary is known, Personnel will provide a quotation of benefits and options payable under the Pension scheme for each member, and for all other retiring employees not covered by the Pension scheme, a note of benefits expected to be paid on retirement. Personnel will assist each employee to calculate their income likely to be achieved in initial retirement and to assess their financial position whilst earning capacity is still available.

Note: Traditionally pension benefits have been linked to the State Retirement age. It may be preferable in future to disconnect these two facets of employment.

Retirement

Adopting the above entails employees thinking about the change, so that dealing with practical implications may be made easier.

Procedure

1. 3 months before the State Pension is due to be paid, Payroll checks that the employee has received a notification from the Contributions Agency regarding the payment of the State pension, and if not, assists chasing for this.
2. Personnel arranges leaving celebration – date, venue, list of those attending, etc., the employee being asked to select a leaving gift in accordance with policy.
3. A month before retirement, Payroll reviews the situation regarding any loans outstanding, statutory sick pay, etc., and advises Personnel of adjustments that may need to be made. (See WAGE PAYMENTS re deductions.)
4. Personnel reviews the position regarding employees with company cars and considers whether the employee will be able to purchase the vehicle and, if so, obtains a price and discusses.
5. Personnel arranges a retirement party, presentation of the gift, and payment of all outstanding sums via normal leaving procedure, and for the addition of the employee to the roll of retired employees.

Recent developments

As this book was being printed, there was considerable discussion, in advance of anti-ageism legislation required by October 2006 regarding the possibility of the customary retirement age being increased to 70 either on a voluntary or compulsory basis. Were this to happen a considerable number of changes would need to be enacted - extending the upper age limits on a number of tribunal application subjects, redundancy etc. Attention has been drawn to the difficulties employers might experience dealing with ageing employees - possibly needing to use 'capability' procedures which could be very unfortunate when the subject had long and loyal service.

Post-retirement

Many employers try to retain some contact with former employees which is often valued highly.

Draft checklist

Following retirement, all retired employees will receive:

1. A copy of each issue of the organisation newsletter.
2. A retired employees' discount card allowing purchase of the Organisation products at a discount.
3. Invitations to the retired employees' reunions.
4. Invitations to attend shareholders' open days at the facility.
5. Christmas cards and gifts.
6. A year's subscription to Choice – the magazine of the Pre-Retirement Association.
7. Visits from Personnel (for retired employees unable to attend the reunion(s)).

Death in retirement

When a retired employee dies, Personnel should discover the date of the funeral, arrange flowers (or donation to charity as requested) and for a representative of the Organisation to attend. If there is a spouse or dependent, pension details should be obtained and provided. Personnel alters/deletes name from the mailing list.

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Searching employees

Basis for inclusion

Commercial advisability with potential legal overtones

Background

Research indicates that of the total employees in the average Organisation, 25% are honest and another 25% are dishonest. The remaining 50% are said to be as honest or dishonest as the procedures of their employer will let them be. Adequate procedures and regular policing of such procedures are essential to minimise theft.

Procedures

Procedures which impinge on honesty must be adhered to strictly. Once the rule has been breached and is known to have been breached its effectiveness may be at an end.

Case study

In *Pilkington v Morrey and Williams,* the Employment Appeals Tribunal noted that the employer was aware that employees routinely claimed for expenses which had not been incurred, and these were paid with the knowledge of the employer. Because of this precedent, the dismissal of two employees for following it was found to be unfair when they claimed, as their defence, that they were 'confused' as to the situation.

Wherever there is doubt or uncertainty, the situation can be exploited. organisations should consider implementing a chart such as is shown in THEFT, delineating who has authority to authorise what expenditure.

Buying products

Many organisations allow their employees to purchase products (perhaps slightly substandard) or discontinued lines, at a discount. Since this legitimate removal of such items from the premises can be abused, a well-advertised policy document should be drawn up and strictly monitored.

Draft policy

1. All employees are expected to respect, to protect and to retain for the exclusive use of the Organisation, all property in the ownership of the Organisation. Such property includes samples received by and prepared by the Organisation, discarded product and raw material, and all waste on the premises or belonging to the Organisation but held by others on behalf of the Organisation.
2. Such property may not be removed, damaged or destroyed without the prior express and written permission of the management. Unauthorised removal will be regarded as theft, dealt with under the theft policy, and will be subject to prosecution as well as dismissal.
3. Surplus items, supported by a Material Destruction Note signed by the management, will be channelled through the staff shop, together with product Authorised for such disposal and other items as management may from time to time determine, and will be made available to employees at advantageous prices for their own use, (and for the use of their immediate families) and not in any case for resale. The receipt issued must be retained as proof of purchase.
4. Employees may not conduct any other business which is or may be in competition with the business of the Organisation, or any other business without the prior, express and written permission of the management, and may not divulge to any other party, information concerning the Organisation or its products or plans.

5. Any employee breaking these rules will be considered to be guilty of gross misconduct.

Search policy

Having set up policies and procedures for the legitimate removal of items from the premises, a search policy can be implemented. Since searching is repugnant to many, the manner in which it is introduced needs to be carefully considered, and there should be full consultation with employee representatives. Implementing a policy should not be rushed – every opportunity should be taken to explain the rationale and need. The framing of a policy and procedure should stress that all searches will be carried out tactfully, confidentially and at random.

Draft policy

1. Unless the Organisation has clear reason to suspect an employee of theft, those to be searched should be chosen entirely at random (e.g. using payroll numbers rather than names).
2. Confidential rooms for the conduct of searches will be provided and the searches will be conducted by members of the same sex as the subject. Ideally, a witness acceptable to both parties should also be present, although this is not compulsory for employees.
3. The searcher should indicate to the subject that the Organisation has a right to search and ask if there is any objection, pointing out (if applicable) that a refusal to allow the search will be regarded, in the absence of mitigating circumstances, as misconduct. If the employee refuses, the effect should be carefully explained again. If, following such explanation, there is still a refusal, the employee should be suspended on full pay for 24 hours pending consideration of the case under the disciplinary code.
4. Employees should be asked to open bags, etc., and the boot/rear of any vehicle which has been parked on the premises. On no account should any comment be made on any private item seen during the conduct of the search. It is essential that the process is carried out with tact and respect.

5. The day (as well as the time should there be a shift system in operation) should be varied, and occasionally two (or more) searches should be carried out within a short space of time (even sequentially). The random nature and unexpectedness of the procedure is one of its main strengths.
6. Every search should be conducted swiftly. This is particularly important, since, if there is any delay, it may result in the search being carried out after working hours, i.e. in the employees' own time which may have implications under the NATIONAL MINIMUM WAGE requirements.
7. If any employees (or agents, consultants, etc.,) have a legitimate need to remove a product and/or raw material, etc., they should be given a suitable letter of authority for use should they be chosen as a subject for the search process.
8. Employees who have been authorised to remove a product from the premises should be prepared to produce the receipt issued at the time of purchase.

Case study

In *Trotter v Grattan plc* it was held that it was acceptable (since it was common practice in the industry) for the employer not only to carry out random searches of bags etc but also body searches and even searches of their mobile phones. An employee who objected to the policy and resigned failed to win his case of constructive dismissal. (Searching mobile phones was found to be acceptable since the employer was able to demonstrate that some employees were recording customers' credit card details on their phones – presumably for subsequent fraudulent use.)

Sickness

Basis for inclusion

Legal requirement

Commercial necessity

Background

When an employee is sick and absent from work, employers may (subject to earnings) be responsible for paying them up to 28 weeks Statutory Sick Pay (SSP). Only small employers can reclaim SSP from the State. Many employers also provide occupational sickness benefit. Neither should be paid unless the employer is satisfied that the absence is for genuine sickness. This can pose problems, since many employers feel loath to judge the genuineness of an absence for sickness, although as far as SSP is concerned the State requires employers to pay only when they are satisfied that the sickness is genuine. If such a payment is not made and the employee disputes it, the onus is on the employee at a Tribunal to prove that the absence was for genuine sickness.

Self-certification

An employee is required to 'self-certify' the first 7 days of their sickness. Forms are available for this purpose at local Revenue offices and Job Centres (and even in some doctor's surgeries), but there is nothing to stop an employer devising their own form.

DRAFT SELF-CERTIFICATION FORM

Name _____No _____

Dept _____

I was ill/absent from (date)to (date)because (give details, symptoms, etc)

I returned to work on

_____

I agree to [the Organisation] consulting my doctor, regarding this illness, who is

Name _____

Address_____

_____

Signed _____

Name _____Date _____

Note: It is a serious disciplinary offence to make a false statement on this form.

SUPERVISOR'S COMMENTS

I interviewed the above-named on and have the following comments

_____

_____

_____

_____

Signed _____

Date _____

In signing the form, the supervisor is required to state whether they believe the sickness to be genuine or not. With suspected malingerers it may be acceptable to pass one or two certificates, perhaps with some degree of investigation and question, querying later claims when the records of the earlier claims (i.e. on the quarterly record form below or on the annual individual attendance record – see ABSENCE) are available as evidence.

Building the record

The rules regarding the payment of SSP (particularly in relationship to linked absences) are complex and care should be taken to ensure that the form (which could usefully cope with the recording of any occupational sickness payments) covers these eventualities. When responsibility for payment of SSP was passed to employers many restricted the rate of any occupational sickness payment to a topping up amount, i.e. an amount which brings the SSP amount up to the employee's normal basic wage.

Employers whose occupational sickness payment is at least the level required under SSP arrangements can opt out of the SSP scheme.

ORGANISATION NAME

Name _____

Dept _____

Date joined Organisation _____

Rate of pay (average last 8 weeks)	=	£ Basic daily
Changed rate (effective)	=	£
SSP weekly rate	=	£ Daily rate
Changed rate (effective)	=	£

MONTH / **DAY**	SSP rate	COY rate	Month Day	SSP rate	COY rate	Month Day	SSP rate	COY rate
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M								
T								
W								
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Days b/f _____

Days paid _____

Days c/f _____

Copies: Top – Payroll, 1st – File, 2nd – Employee, 3rd.

The preparation of a quarterly form generates an opportunity for the supervisor to review the record regularly with documentary evidence to hand. Where there are employees who may be malingering, requiring them to attend an interview and be asked to explain a poor attendance record, with a copy of the written evidence of such attendance having already been given to them and lying on the table during the interview, can be an effective way of curtailing future abuse. A subsequent interview might also be linked to a disciplinary process in the event that no improvement has taken place. The employer may also be able to suggest that the employee attend the organisation retained medical advisor for a 'second opinion' or report.

Even genuine illness may be a legitimate reason for disciplinary investigation and dismissal (although attention needs to be paid to the provisions of the Disability Discrimination Act).

Sanctions

The basis of a contract of employment is that in return for a certain payment, the employee will attend for a set number of hours per day, week or year. Non-attendance frustrates the intent of the contract, and although a responsible employer will normally grant an annual sickness entitlement, if this allowance is exhausted or it is suspected it is being abused (e.g. by claiming more time than needed (even for genuine sickness) there may be acceptable grounds for sanction and dismissal. In considering taking sanctions for sickness it is essential to be fair, to take time to explore alternatives (including alternative jobs, hours, location, etc.) and to give an employee every opportunity to put forward their views and proposals.

A flexible approach should help create a climate for positive resolution of the problem – and a sound defence should a tribunal action result.

Draft procedure

1. Employer considers the history of the illness and of the job requirements, i.e. for how long other employees or temporary staff can cover or be expected to cover the absence. It might be advisable to take soundings from colleagues. If colleagues state that they are able to cover the absence it could be dangerous to start any disciplinary process, and may be preferable to wait for a few weeks and check again. Whilst colleagues are prepared to cover the absence and there is no productivity loss, there is no loss to the employer.

2. The employee is invited (within a time limit – say 7 days) to state for how long the absence is expected to last, the expected date of return, or, if repetitive, how long absences are likely to continue. It may be prudent to request that the employee is examined by a doctor retained by the business for an independent report, or that the employee's own doctor is requested to provide a report for first hand advice (which will require permission from the employee).

3. Consideration is given to the reply. If there is unlikely to be any improvement and/or no indication can be given of a return, the employer should consider the possibility of part-time work, or HOMEWORKING (i.e. displaying a flexible approach) and suggest this to the employee. A decision should be requested from the employee within 14 days. (If the employee is likely to be protected by the provisions of the Disability Discrimination Act, it is essential that all such 'reasonable adjustments' are considered fully.)

4. If neither are possible or the decision is that return is still delayed (to a time unacceptable to the business), or that full attendance cannot be assured and colleagues are unable to continue to cover, the employee could be advised that, in the circumstances, it sees no way in which the contract can be continued. The wording 'having been frustrated by the sickness' might be used, although this should not be given as any reason for dismissal – in such circumstances the legal terminology is 'some other substantial reason'.

5. If there is still no acceptable indication of a resumption of normal activity or date of such resumption, a further letter might be sent stating that in the absence of this, the employer is now considering bringing the contract to an end but that any further representations will even now be sympathetically reviewed.
6. Ideally, there should be a meeting at which the employee would have the right to be accompanied.
7. Before actioning the termination of the contract, any further points put by the employee in response, or generated by the employer, must be considered sympathetically, and the situation re-assessed. Should health improve, or the situation regarding part-time or homeworking alter, the business could offer to consider re-employment in the future. This might take a further 21 days.
8. If no satisfactory indication of resumption is given, then notice should be given as required by the contract. If a reason for dismissal is requested, 'inability to perform the duties required by the contract' (i.e. 'some other substantial reason') might be appropriate. The situation regarding notice pay is not clear but it is probably safest (where benefits have expired and the employee is not therefore being paid) for them to be paid for the notice period (whichever is the greater of one week for each year of service or the notice set out in the contract).

Tribunal action

There have been a number of tribunal cases concerning dismissal for sickness. Generally, providing employers have investigated the position, discussed the position with the employee and considered and investigated other options, dismissals for sickness are regarded as 'some other substantial reason' and can be found to be fair.

Case study

In *Wharfedale Loudspeakers Ltd v Poynton*, the EAT commented that it was clear from settled cases that persistent absenteeism, albeit on genuine sickness grounds, might well justify the dismissal of an employee, particularly if that employee held a responsible job. However, the over-riding rule should be that each case be considered objectively on its merits.

Some employers state that sickness above a set annual threshold will be investigated. Whilst this may be clear it can have the effect of 'inviting' the unscrupulous to ensure they 'take' just below the threshold as if it were a right to 'sick leave'.

Sickness on holiday

It can be confusing to discern rights and responsibilities when an employee claims to have been sick whilst on holiday. It is important to make it clear in contract documentation that if a person falls sick when on holiday:

a) they must get a certificate from a recognised medical practitioner

b) their holiday is suspended for the period of sickness. Amounts already paid in respect of the holiday will need to be recovered – but offset by any SSP and occupational sickness benefit (if applicable)

c) the amount of holiday during the sickness should be added to the amount still to be taken.

Stress

Basis for inclusion

Potential legal liability

Background

It has been estimated that at any one time as many as 20% of the workforce of the average Organisation will be trying to cope with a personal problem likely to affect their performance. Of these nearly half could be experiencing a serious problem, such as divorce, death or serious illness of a close relative or friend, court case, and so on. All these eventualities as well as uncontrollable pressure of work, could lead to stress.

Definition

Stress could be defined as 'pressure which is uncontrollable by the sufferer'. The problems set out above and others, can cause stress which is detrimental to the output of the employee, and could affect the output of their colleagues. This can be compounded by unsympathetic attitudes of those in any position of authority who in trying to achieve output or targets, may feel their efforts are being negated, virtually deliberately by those suffering from stress. Unlike a broken leg, or a heavy cold, stress symptoms are far less obvious, and thus more difficult to discern and counter. Stress-related illnesses account for well over a third of certified absence in the UK and are likely to account for a substantial number of problem employees, who require counselling and help rather than sanctions.

Overworking

There can be little doubt that there is placed on many employees a continual and growing pressure to perform effectively. Indeed, surveys indicate that compared to 5 years ago when legislation was introduced to curtail the number of hours being worked a week, those numbers have increased in many areas. This is due to concerns over the lack of permanence of job security, increased pressure to perform and a lack of confidence in the future, etc. These pressures have in turn resulted in the growth of stress as an ongoing medical condition – and a source of actions against employers.

Case study

The problem in terms of liability began with the decision in the *Walker v Northumberland County Council* case. The High Court found in favour of the employee who had suffered two nervous breakdowns as the result of his work and the fact that his employer had done little or nothing to alleviate the stress that he had been under. He was awarded £176,000. His employers were not held liable for Mr Walkers first breakdown, it was the fact that when he returned to the pressurised work which had brought about his first breakdown, they put him back in the same job and took no steps to alleviate the pressures placed on him. When he had a second breakdown they were held liable – they knew about his condition and did nothing about it.

The Walker case pre-dated the Disability Discrimination Act. Since many cases of stress could last longer than 12 months, if they prevented the subject carrying out the normal acts of life unaided, they could now be covered by the Act. Compensation for discrimination is unlimited.

Basis of claim

For an employee to claim damages for stress against his or her employer they need to prove culpability and to show:

a) that there had been a breach of the employer's common law duty to provide all employees with a safe working environment; AND

b) that medical evidence was available demonstrating that the condition was stress-related and that this was linked to the working environment; AND

c) that the employer was in some way negligent in that the condition was foreseeable and yet the employer did nothing about it (or that the condition was reported to the employer and the employer then did nothing about it).

Case studies

In a number of instances, employees have gained substantial sums for stress caused by the working environment.

- In a bullying case a deputy head teacher was bullied by his junior colleagues to such an extent that he suffered a nervous breakdown. His claim was settled for £101,000.
- An employee of Liverpool City Council won £84,000 for stress brought about by bullying instigated by a colleague – later her junior.
- Another council employer was awarded £67,000 for stress brought about by her having to deal with aggressive council house tenants following her transfer without training into that department.

The most common causes of stress are:

a) long working hours;

b) work overload;

c) job characteristics (e.g. dealing with the public);

d) lack of management support;

e) lengthy and/or wearying Travelling; and

f) bullying and harassment.

Most are to a greater or lesser extent the responsibility of the employer.

In seeking to provide a working environment conducive to safe productive work as well as to show a defence in the event of a claim related to stress, employers need to be proactive not reactive. Managers should watch for stressful characteristics (although these are not always obvious) and should act when such characteristics are noticed.

Case study

In *Barber v Somerset County Council*, the House of Lords overturned a Court of Appeal decision rejecting Mr Barber's stress claim. The House of Lords said that the 'overall test is still the conduct of the reasonable and prudent employer, taking positive thought for his workers in the light of what he knows or ought to know'. Although the Court of Appeal's previous advice that 'an employer is entitled to assume that his employee is up to the normal pressures of the job' was sound, it had to be read as that (advice) and not having statutory force. Every case depends on its own facts.

Research

A survey carried out by independent think tank, Demos, concluded:

a) 44% of the workforce return home exhausted.

b) 60% of men and 45% of women work on Saturday (usually or sometimes).

c) 28% of men work more than 48 hours each week (but 70% of those working more than 40 hours want to work less). In fact UK employees work longer than employees in any other EU country.

d) 25% of managers take work home each week.

e) 86% of women state they never have enough time to get things done.

f) 33% of men work a 6/7 day week.

g) The average lunch 'hour' lasts 30 minutes.

Of itself each factor may not have a harmfully stressful result – some people after all say they work best when under pressure. Those working long hours might find less working stress with shorter hours, but if wages are reduced in proportion (as would normally be expected) the 'economic stress' of trying to survive on a lower income might be greater than the previous 'working stress'. However, the overall picture suggests that people are needing to work longer and harder to generate the income they feel they need to exist within society, or because they feel insecure – or both. If it is perceived that employers can be sued for 'causing' stress or its results, this could result in an increased number of such claims – a trend which those that specialise in personal injury claims are now reporting. It would be prudent for employers to be prepared.

Curtailing the claims

There was a swift growth in the number of such claims which was brought to an equally swift end when four of the cases went before the Court of Appeal in late 2001. The Court of Appeal promptly rejected three of the claims and only allowed the fourth with 'some degree of hesitation'. The Court in its judgement set out a number of points of guidance for the employers being pro-active to avoid stress claims of which the following three are possibly the most important:

a) Employers are entitled to take at face value what they are told by their employees and do not need to make searching enquiries. Presumably therefore, if the employer suspected an employee was under stress but the employee stated they were not, the employer

would be able to accept that answer without further enquiry – although even then it might be advisable to take medical advice on the matter.

b) Employers are entitled to assume that an employee will be able to withstand the normal pressures of the job UNLESS they know of a particular problem. Again, it would be advisable to investigate further, with medical advice if appropriate, if there is any suspicion that the employee is under stress.

   WARNING: Note the House of Lords decision in the Barber case above.

c) Any employer who offers a confidential counselling service with access to treatment is unlikely to be held liable in the event of a stress claim. It would be advisable to source such a service and provide its name and address and a contact name/number in contract documentation or whenever an employee states they are under, or are perceived to be under, stress.

Employee Assistance Programmes (EAPs)

The Court's last point would be covered by the employer offering an EAP. There has been a considerable rise in the number of employers providing EAPs in recent years. Generally, these are confidential services provided to enable employees to source advice and counselling regarding problems often, but not exclusively, related to the work environment and relationships. Making arrangements so that any employee feeling stressed could contact such a service for advice should help an employer defend a subsequent claim. Some private medical cover insurers provide stress counselling services – as increasingly do employer liability insurers. Making free access to such facilities would seem to be a suitable means of protecting against potential stress claims, at least until new legislation is introduced.

An employer might also wish to use the checklist in CAPABILITY (p71).

Current developments

The HSE has introduced a code to try to reduce stress at work. There are 6 tests and if an employer fails any, it will fail a stress assessment and could be held liable if there is a stress claim.

The tests:

a) At least 85% of employees must say that they:
   - can cope with job demands;
   - have an adequate say over how they do the work; and
   - get adequate support from colleagues and superiors.

b) At least 65% of employees must say that they:
   - are not subjected to unacceptable behaviour;
   - understand their role and responsibilities; and
   - are involved in organisational changes.

Recently the first 'improvement notice' was served by the HSE against an employer (a hospital) which it indicated that the employer must take remedial action within 3 months to protect its employees from work-based stress, or it will consider prosecution.

As this book was being printed the Health & Safety Commission launched a three month consultation campaign on stress at work asking for views of all involved, presumably in advance of recommending legislation, since some time ago the Commission called for an update of the Health & Safety at Work Act 1974 incorporating stress requirements.

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Suggestion schemes

Basis for inclusion

Commercial advisability – improving productivity

Background

Suggestion schemes work on the premise that no-one should understand the job in hand better than the person actually performing it, and that the ideas that they may have on improving their job (and any other aspects within the Organisation) are worth consideration. Although improving profitability and/or productivity, and efficiency or saving money are quantifiable effects of operating such a scheme, of greater value may be the motivational benefit that result from employees discussing and seeing their own ideas implemented for improvements.

Recognition

All ideas should be recognised, not just to acknowledge the thought of the originator but also to encourage others to contribute. The Work Foundation estimated recently that there were between 400 and 500 schemes in operation, and in its own survey of 103 schemes, noted that over 73,000 suggestions had been received, or roughly 5 from every 100 employees, with around 20% taken up.

In Japan the concept is far more widely recognised than in the UK, and Toyota take up over 99% of the ideas put forward by their employees.

Case studies

Richer Sounds is a 70 employee, £12 million turnover company which readily acknowledges that it receives many of its best ideas from its staff, including a discount scheme which boosted sales tenfold and a policy of telephoning customers to check they were happy with a repair service. The company funds monthly brainstorming sessions for employees in local pubs. The number of suggestions made by each store counts towards a competition which can be won by the store. All suggestions, whether accepted or not, are rewarded. The rewards range from £5 to a trip on the Orient Express.

Dunlop General Rubber Products claim to have saved over £54,000 in one year as a result of employee's suggestions to their 'Bright Spark' scheme. One employee suggested a change in the cutting of foam rubber for vehicle mats. It saves £7,500 a year. Another employee suggested a new method of removing the blemishes from rubber products which saved £12,000 a year.

BMW Group Plant in Oxford (reports the CIPD's People Management, November 2003) has implemented more than 8,000 ideas from staff members and 'those changes have contributed to savings of more than £6.5 million in the last 12 months'.

Setting up

Any such scheme must be introduced carefully, ideas must be considered fairly and impartially, and above all, the scheme must be promoted continuously.

Suggested procedure

1. Plan the whole scheme carefully – ensuring that as many employees as possible are eligible. Almost inevitably it will be necessary to

exclude those involved in research and development (part of whose responsibilities will normally include generating new ideas) as well as those involved in production study, organisation and methods, etc.

2. Appoint a senior manager to take responsibility for introducing and running the scheme. With a large workforce the time requirements should not be under-estimated. The fact that a senior person is involved will provide an indication that top management are committed to the concept. The scheme must be constantly promoted and supported – this takes a considerable amount of dedication from the top.

3. Set up a judging panel which should be objective and impartial. Representatives of employees should sit on such a panel with possibly a non-executive director or even someone not directly connected with the Organisation taking the chair. No-one connected with the judging panel should be able to make a suggestion. This may militate against employees participating in the panel, although to preserve this option, 'terms of office' could be kept short.

4. Rewards should be paid. The average seems to be about a fifth of the value of the idea. It may be helpful for each idea adopted to set a useful life (restricted to a period no longer than, say, three years) and pay out a proportion of the value each year. In this way the successful 'suggester' as well as his or her colleagues, will be reminded of the value of the scheme – and tax should be minimised.

5. The paperwork should be kept as simple as possible. The more complex the paperwork, the less likely employees are to complete it. The paperwork must encourage suggestions rather than pose a barrier to their submission.

6. Confidentiality should be preserved to minimise the possibility of 'poaching' of ideas. This can be effected by the suggestions being handed in sealed envelopes to the administrator and a receipt bearing the date, the name of the 'suggester' and a rough guide to the idea, being issued. The person making the suggestion may gain 'rights' to the suggestion and adequate protection of such rights needs to be provided.

Note: Reference should be made to the Confidentiality clause included in the draft CONTRACT from which it will be noted that the employer reserves to itself, subject to legal limitations (see below), the rights to inventions, etc., originated during employment. Normally these restrictions apply to work which the employee was performing, and for this reason such schemes often exclude personnel working in research, development or design departments. The concept of the suggestion scheme is to endeavour to encourage all employees to put forward ideas which can relate to subjects outside their own responsibilities.

7. All ideas should be given initial consideration and a likely decision (that is acceptance or not) within 2 weeks. Leaving the consideration time longer than this may militate against employees' continuing interests. It may help if every (sensible) idea receives a nominal award regardless of take-up or rejection.
8. The scheme should be given constant and original publicity, and whenever an award is made, photos should be taken and promulgated widely.
9. The scheme's success depends on the commitment of the workforce. Ideally, the scheme should have an element of fun. The promotional material should stress this aspect without trivialising the scheme.
10. It may be helpful to award an additional 'star prize' to the most valuable suggestion in a year. If the value of individual suggestions is not thought likely to be valuable, it may be advisable to make this subject to either the total savings or gains exceeding a set figure, or to an individual suggestion exceeding that figure. However, the purpose of this 'star prize' is to aid promotion and hedging it with too many provisos is the surest way to demotivate the very people whose participation the scheme seeks.

An holistic approach

Whilst suggestion schemes can be a valuable means of supporting a comprehensive COMMUNICATION process as well as a means of generating extra profits and employee commitment, they cannot perform such tasks on their own. There is a need for a genuine communication policy and practice to be in place first, to ensure the success of the scheme. Without this some schemes fail miserably. Whilst the mechanics may be correct, the attitude of the target audience will be wrong. In many ways this has a cyclical effect: to launch a scheme there needs to be good communication, whilst the implementation and operation of a suggestion scheme can form an important part of successful employer:employee communication. (See also QUALITY CIRCLES.)

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Termination checklist

Basis for inclusion

Legal and commercial obligations

Background

To provide an accurate record of events, resignations should be evidenced by paperwork and not be actioned solely on word of mouth. Thus, a policy should be adopted that regardless of the reason for termination (including DEATH) a checklist of items should be prepared. To ensure compliance, the payroll department could be instructed not to release the final pay, etc., until in receipt of a completed checklist.

Resignations

Whenever an employee indicates that they wish to resign, they should be asked to complete a short form – such as the following (see over).

RESIGNATION

To [the employer] _____

Please note that I wish to resign from your employment with effect from _____[date]* because** _____

_____

Please arrange to pay me up to that date.

Signed _____

Date _____

* Under your contract of employment you should give the Organisation [number] weeks notice.

** You do not have to give a reason, however, in planning our employment needs, it helps to know why employees leave us.

Completion of such a form provides written confirmation of their intent and should minimise any possibility of misunderstanding. This is particularly important where the resignation has been 'indicated' or 'uttered' in temper. Tribunals accept that words said in the heat of the moment may not be meant seriously and may be regretted when tempers cool. An employer who attempts to bring employment to an end by relying on an employee's shouted words 'I resign' (even when apparently evidenced by them walking out of the workplace) could find that they are regarded as having dismissed the employee unfairly. When a resignation is evinced in the heat of the moment a letter of resignation should be presented to the employee when tempers have cooled. If the employee does not wish to sign it no attempt should be made to force them to do so. Forcing a resignation in such circumstances would almost certainly be unfair dismissal.

Action to terminate

There are a number of issues to be addressed when an employee leaves and a checklist can help avoid items being omitted or overlooked.

1. Resignation letter/ Termination authority received
2. Issue leaving form covering:
    a) Reason for leaving (see Termination interview below).
    b) Accrued HOLIDAY pay to be paid.
    c) LOAN or wages advance to be recovered.
    d) EXPENSES float to be recovered (although some of this may be retained to cover current month expenses).

(Under the Employment Protection Act 1996, only items for which the employer has an authority to deduct from wages can be so deducted.)

3. Prepare:
    a) P45; and
    b) SSP(1)L re Statutory Sick Pay, if the employee has been paid SSP during the last 56 days of employment.
4. Recover:
    a) protective clothing;
    b) access and other keys;
    c) company car;
    d) phone and any other Organisation property;
    e) credit, fuel cards;
    f) samples, employers notepaper and other paperwork, confirmation of order forms etc.
5. Check:
    a) forwarding address (particularly if the employee is retiring); and
    b) status of computer passwords, and locks, safes, etc. (if employee had access, these may need changing).

6. Replace:

   a) employee's name if on police/security/fire call out, replacement; and

   b) employee serving on any external or internal trade, etc., committee or body.

7. Advise outside bodies of change of:

   a) chargee's name, if employee's telephone or other expense items charged to Organisation; and

   b) contact address if employee was member of health insurance or other scheme.

8. Remind employees subject to the terms of, or who have signed a CONFIDENTIALITY UNDERTAKING, of the need to abide by its terms.

9. Buyers

   If the employee was involved in taking orders for the organisation products, or placing orders on its behalf, and if the termination is acrimonious, it may be wise to advise all external parties that such authority no longer rests with the former employee. Failure to do this may result in third parties seeking to enforce contracts subsequently entered into by them in good faith believing they were dealing with a person who still had authority to act on behalf of the Organisation.

Termination interview

The resignation of many employees is wasteful. It is logical to try to reduce these losses. Discovering the reasons is useful, not necessarily to attempt to get the employee to reconsider, but to discover if there are any common trends. The Termination Notification (below) allows for a written record of such a discussion – the aim being to find out what the employee really thought of the job and the Organisation.

ORGANISATION TERMINATION NOTIFICATION

Employee Name_____

Clock No/Reference _____

I attach a resignation note from [name] effective [date]. Please arrange to terminate employment and to pay up to that date, with all outstanding monies due, whilst collecting all sums due to the Organisation. Should a reference be required from a future employer I have indicated the record below. I would/would not* re-employ

_____

_____

Signature _____(Manager).Dept.

Quantity of work:	V.Good/ Good/ Average/ Poor *
Quality of work:	V.Good/ Good/ Average/ Poor *
Dedication to work:	V.Good/ Good/ Average/ Poor *
Relationships:	V.Good/ Good/ Average/ Poor *
Attendance:	V.Good/ Good/ Average/ Poor *
Punctuality:	V.Good/ Good/ Average/ Poor *
Conduct:	V.Good/ Good/ Average/ Poor *

Exit interview held on _____

Reason for leaving _____

_____

Details of new position (inc. reward package) _____

_____

Reason for seeking new position_____

_____

Relationship with department/staff/manager _____

_____

Perception of Organisation _____

_____

Comments on manager's summation _____

_____

Signature _____(manager conducting the interview)

Some employers ask voluntary leavers to identify three items that would help make them a better employer.

Enforced termination

Where the termination has been brought about, not by act of the employee (i.e. a voluntary resignation) but by action of the employer (DISMISSAL after warning, or summary dismissal due to gross misconduct) the need to check every step needs to be stressed. Those responsible for initiating action need to ask the following questions.

1. Is it proven that the employee broke a rule?
2. Did the employee know of the rule (and of any changes)?
3. Did the employee realise the breaking (or repeated breaking) of the rule would lead to dismissal?
4. Is the rule itself reasonable and is dismissal for breaking it reasonable in the circumstances?
5. What explanation has been offered by the employee – and is this in any way acceptable?
6. Are there any extenuating circumstances?
7. Is dismissal the only and appropriate option?
8. Have we been consistent in our attitude to the breaking of this rule?
9. Are there any other factors we should take into account?

(See also DISMISSAL.)

Terrorist activity

Basis for inclusion

Commercial advisability

Background

A policy for dealing with telephone threats and suspect packages, may be advisable, even if, to avoid concern, the contents are made known to only a few employees. Conversely, some organisations, being more prone to such threats, may need to alert their staff by distributing the policy widely.

Telephone threats

Most threats (the police estimate that over 95% are hoaxes) are made by telephone by disaffected employees or ex-employees. Receptionists and telephonists should be coached to deal with such calls.

Checklist – dealing with a threat call

1) Accept call in a calm, unhurried manner. Ask caller to repeat the sentence or message to give yourself time to recover and, without alerting the caller, to advise someone who can listen in.

2) Try to keep caller talking – 'I'm sorry this is a bad line – I can't hear you clearly', or 'I don't understand what you mean – could you repeat that please so that I get it right' or 'Did you say (repeat the statement the caller made)', etc.

3) Don't worry about the call. Try to keep the caller talking, to find out as much information as possible. Take particular note of any unusual words or phrases used in case these contain a code word.

4) Try to find out the answers to the following questions:

   a) Where is the bomb/device?

   b) What type is it – incendiary, explosive, gas, etc.?

   c) Who put it there, and when?

   d) Who is the caller, and who do they represent?

   e) Do they have any Police Identification code?

   f) When will bomb explode?

   g) Why is the person taking this action against Organisation?

   h) Do they have a grudge against this Organisation?

   i) Nature of complaint?

   j) Will bomb affect fire evacuation routes? (If so, do not activate fire alarm, as this could put employees at greater risk.)

5) During, or immediately after, conversation make note of caller's characteristics:

   a) Young, old, male, female, English, foreign.

   b) Special accent or speech defect.

   c) Drunk or drugged, lucid, rambling or incoherent.

   d) Did it sound as if message was being read?

   e) Any background noises, or anything else of note?

6) Organisations can suffer loss and their employees injury as a result of terrorist activity.

   Notify senior person present during the call, or immediately after. Senior person will need to make decision whether to evacuate or not, and will contact Police/Fire Brigade. Before arranging evacuation, fire evacuation routes should be checked for any suspicious packages. If suspicious packages are found, an alternative means of escape should be used, if not, use fire escape

routes to evacuate. (The police may advise not to use the fire alarm as noise may set off some devices.)

Staff should be requested to take personal belongings with them, to remove as many 'suspect' packages as possible prior to the Police search.

7) When the Police arrive, staff should act in accordance with their instructions. The Police will normally request that an employee accompany them during the search to identify, and thus eliminate from suspicion, harmless packages.

8) organisations with a record of such alarms should arrange to link a tape recorder to the switchboard ready for immediate operation.

Suspect packages

Receipt of a suspect package brings the potential danger into the premises without warning. Staff whose responsibility it is to handle post should be coached.

Checklist – suspect packages

1. The Organisation will publish regularly, a list of countries from which suspect packages could arrive. Packages from these countries should be treated with caution.
2. All packages which are oddly addressed or unusual, show signs of staining from a liquid, display metal protrusions, seem to contain machinery not likely to be of interest to the recipient, have broken coverings, have contents which are ticking (or making a similar noise), smell of almonds or marzipan, etc., (this list is not meant to be exhaustive) should be treated with considerable suspicion and placed within the secure section in the Post Room.
3. The department, and surrounding departments, should be cleared, the matter should be reported to the senior manager present, and the police should be summoned.

Liability

An organisation liability insurers have an interest in the above and need to be kept informed particularly of certain aspects. Most leading insurers have in-house security experts who can advise on individual cases, and it is worth inviting them to survey the premises and make any suggestions for improvements. Because of their potential liability, they need to be informed:

1. If employees regularly accompany police when checking for suspect packages.
2. The Organisation has decided to ignore such calls (thus employees do not evacuate the building on receipt of a telephone threat).
3. The Organisation leaves the decision of whether to evacuate or not to the individual employee.

Theft

Basis for inclusion

Commercial advisability

Legal implications

Background

The unauthorised removal of material, assets or services from employers and abuse of their facilities is on the increase. Some estimate the losses from staff theft and fraud to be as high as 5% of sales, and this is an equivalent reduction of profit. Inevitably this problem will be worse where procedure and policing are slack.

Employee fraud

According to the first 'Fraud Watch' report issued by accountants BDO Stoy Hayward in June 2004, employees perpetrated more than one-third of all reported fraud cases in the previous year. 84% of frauds are perpetrated by men with a median age of 44. Top cities for fraud are London, Birmingham, Glasgow and Liverpool. The authors commented that 'the majority of fraud is committed by employees and directors who know the systems and can override controls'. This pre-supposes that controls exist. In many organisations there is a considerable lack of control which can only encourage more thefts. Making the offer of a job subject to certain conditions as set out in RECRUITMENT may be one way of protecting the organisation.

Authority levels

For the proper control of the Organisation, approval must be granted to contracts by suitably appointed personnel, and for the allocation and disposal of money and stock assets of the Organisation that authority is granted at an appropriate level. Setting out such a commitment sends a clear signal that here is an employer determined to check expenditure – a sign that there is no slackness to be exploited. Conversely, if expenditure is committed in a haphazard way without such control, the message is that here is a situation capable of being exploited.

DRAFT AUTHORITIES CHART

A. Contracts

All contracts between the company and third parties, other than those covered by items set out below, must be channelled through the Company Secretary's office, to ensure correct status (that is whether it is to be regarded as a Deed or not) and approval.

The Company Secretary will arrange the passing of suitable Board resolutions granting approval to specified person(s) to sign on behalf of the company. It should be noted that sufficient time to obtain such a resolution should be allowed.

B. Cash commitment

CAPITAL PROJECTS

Authority for all projects (note: No low cutoff)	Board
(Items must be supported by a Capital expenditure (Capex) form) Repairs and renewals, purchase of furniture and fittings (All items must be supported by a Capex form)	
Up to £1000	Manager – level
Over 1000 and up to £5000	Director
Over £5000	Board

VEHICLES

(Supported by Capex form, for new allocations, or Replacement form (for write-offs and replacements)) Board
All purchases to be in accordance with Policy

EXPENSE ITEMS

Up to £500	Manager – level
Over £500 and up to £1000	Senior manager
Over £1000 and up to £5000	Director
Over £5000	Board

C. Committed expenditure

Rent, rates, utility costs – where no change or increase is less than rate of inflation	Manager – level
Where change has taken place	Director

BOUGHT LEDGER

Raw materials, services, etc., in accordance with budgeted level of production	Purchase manager
Not in accordance with level of production	Director

WAGE ADJUSTMENTS

Annual review	Board
Other than annual review, or for new staff, or replacement at other than at old rate	
Salary up to £10,000 p.a.	Manager – level
Salary over £10,000 p.a.	Board

D. Discipline

The chart could also be used to incorporate guidance as to who is Authorised to give warnings, terminate employment etc. and the first few steps of that procedure. This is particularly important in view of the new rules on DISMISSAL.

The absence of such a controlling authority not only leads to confusion as to 'who can sign for what' but also indicates to those who are interested in exploiting the business for their own interests, that such exploitation is likely to be relatively easy to achieve. The existence of such a chart indicates tighter control and may of itself deter potential thieves. Similarly, tight control over the issue of purchase order forms can restrict abuse.

Case study

In *Pharmed Medicare Private Ltd v Univar* two employees described as 'managers' of an organisation placed a number of small orders which were fulfilled by the seller. The employees then placed a much larger order under a pro forma invoice. There was then a dispute about paying for the goods with the buying organisation stating the seller should have known that the manager did not have authority to place such an order. The seller successfully claimed that the employees concerned had ostensible authority since all previous transactions had been honoured by the buying organisation.

Expenses

Clear rules regarding expenses are essential – including the maximum expenditure that can be claimed by each level of employee and in respect of what purposes such expenditure can be reclaimed. Stating that expenses will only be authorised for payment when supported by receipts, and/or that VAT on such expenditure will only be reimbursed if there is a VAT receipt can help raise the awareness that there is strict control of expenses. Control of company car expenditure is also essential. Employees should know that such expenses are scrutinised for 'logic' (i.e. that the cost of fuel, for example, is proportionate to mileage and model) etc. See EXPENSES.

Theft suspicion

If an employee is suspected of theft, care must be taken in dealing with the situation and independent advice might be advisable.

Draft checklist

1. Check all the facts, suggestions, evidence and record everything in writing in a logical sequence. If there are witnesses prepared to provide statements, these should be compiled and preserved.
2. Consider which procedures have been broken and ensure that the persons involved would have been aware of the procedures.
3. Establish after full investigation who seems to be responsible for the occurrence and check that the evidence seems to support the potential responsibility of the person concerned.
4. Interview the suspected person(s) (with an independent witness taking notes) and ask for their views and any conflicting accounts.
5. Re-check the witness statements to try and reconcile any differences.
6. Re-consider whole body of evidence and data, and attempt to assess responsibility.

The 'beyond reasonable doubt' maxim applicable in the criminal court is not required in employment law. Tribunals apply a triple test:

i) 'Was there a full investigation of all the circumstances?'

ii) 'Did the employer genuinely believe the loss to be the responsibility of this employee?'

iii) 'Was it reasonable for the employer to apply the sanction (e.g. of dismissal)?'.

Provided the employer has carried out a full and fair investigation and has an honest belief in the guilt of the employee, any subsequent dismissal is likely to be fair – the ruling in the *British Home Stores v Burchell* case. Equally, if a theft could be the responsibility of two or more employees but the investigation does not disclose which, it may be fair to dismiss all suspected. However, in this case, it could be unwise to dismiss without notice since this implies that each is guilty. Legal advice should be taken.

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Training

Basis for inclusion

Commercial necessity

Background

Most recruits will need training to meet the needs of the employer – even if it is only the essential items covered by the FAMILIARISATION sequence. In a time of rapid change, established employees will also need training and retraining from time to time. Training should be undertaken as a result of, or in order to satisfy, business needs.

An ongoing process

The assessment of training needs is not easily undertaken as it requires a considerable commitment of time and resources. Neither is a training plan or programme, a once and for all concept. organisations constantly change, creating new needs and skill requirements. The assessment of training requirements, and the provision of the means by which such requirements are satisfied, needs to be long-term and there will need to be a regular discussions between management and employees, in order to determine how best to achieve the requirements of the business. During these discussions it must be accepted that some employees, quite capable of progressing, may prefer to remain in their current position and to perform adequately at that level – that should be respected.

Policy

The process may best start with the adoption of a policy stating the commitment of the Organisation to the principle of training, so that all involved know the principles and the content can act as a criteria.

Draft policy

Effective training = Increased competence = Improved business output

The Organisation recognises that training is fundamental to the continuation of its efficient and profitable operation, and that responsibility for training rests with management and supervision. To help achieve its objectives, the Organisation will develop its employees, by a systematic approach applicable to its requirements under the following specific aims. The Organisation undertakes to:

1. Provide on and off the job FAMILIARISATION training for all new employees, and refresher training for established employees, whenever possible.
2. Foster regular discussions between management and employees, concerning employees progress in their jobs and aims for the future, in accordance with the APPRAISAL programme. Training needs will be determined from such discussions, in order to allow employees to reach a pre-determined level of competence in their jobs (in accordance with the measures of performance set out in JOB DESCRIPTIONS).
3. Provide adequate and appropriate training, before and after all promotions and transfers, to ensure employees reach the pre-determined level of competences as set out in the Job Description for the new position.
4. Provide time off with pay, and the necessary facilities to enable employees to train for their long-term development, as agreed, including utilisation of on and off the job training, distance learning, seminars, conferences, residential courses, etc.
5. Provide, or grant access to, general and training information concerning the Organisation, opportunities for advancement within it, and of training facilities and data available.

Continuous development

Most organisations are now changing at a rate much faster and more comprehensively than at any time previously – change is the only constant. Inevitably, this places requirements on employees to change their approach and attitudes and, indeed, to learn new skills and procedures. In its statement Continuous Development – People and Work, the Chartered Institute of Personnel and Development makes the point that the assessment of training needs must result from an impetus from the Chief Executive, with a commitment to continuous development as being as important as capital investment, research, etc. Results from research conducted by the National Skills Task Force in 2002, indicated:

- A quarter of employers were unable to fill jobs because of a lack of skills.
- 20% of adults are functionally illiterate.
- Craft and technical areas cover 40% of all skills shortages.
- There is a rising demand for generic skills (problem solving, communication and IT skills).
- There is a continuing strong demand for specialist IT skills.
- organisations are concerned that a large proportion of the workforce have few or no qualifications.

The Chartered Institute of Personnel and Development's (CIPD) 'Annual Labour Turnover Survey' discloses that over 50% of all recruits leave within 2 years and 75% leave within 6 years of joining a company, often for lack of a career path. 50 years ago an employee might leave school at 15 and work for a single employer for 50 years, following a 9 to 5.30 routine for all those years and performing virtually the same job. Nowadays, many employees might work for between 5 and 9 employers doing a variety of tasks for 50 – 70 years. It may well be that employees will be required to learn entirely new skills on 3 or 4 occasions during their career. The challenge for employers is to provide training that will enable employees to deal successfully with such changing requirements, not only so that the employer has such skills available, but also so that an appropriate range of skills is retained to the Organisation. It is generally accepted, contrary

to some beliefs, that those that provide ongoing training and career opportunities, tend to retain the better employees. The key to operating successfully in the twenty-first century – the century of change – may be more about retaining good calibre employees and retraining them for the specific 'in-house' requirements, than trying to recruit skills in an increasingly competitive jobs market. A number of companies include in their annual reports the amount that they spend on training. It may be that this will develop a widespread expectation (particularly as the rate of change increases) that every employee will spend say 5-8 days training a year. Obviously time is no indication of quality and the training needs to be linked to business and personal needs, and to be assessed for effectiveness. However, only with this level of commitment is it likely that:

a) businesses will be equipped with skills to deal with demands; and

b) employees will become used to the concept and need for personal skills to be developed continuously.

To this end it would be helpful if every employee had and retained throughout their career (that is taking it with them when they change employers), a record of the training they have undergone.

EXAMPLE OF A PERSONAL TRAINING RECORD

Employee name _____

No. _____

Dept._____

Date	Content	Course	Notes/Assessment
Wk1-4	Induction	In dept OTJ	
Wk6	Induction	Training OS	
Wk40	New recruit chk	Personnel	
Wk52	Tech. Drawing	College DR	More input needed
Yr2	Production Cont.	College EC	
Yr2	HR Management	Seminar RES	CIPD interim exam
Yr3	Tech. Drawing	College EC	
Yr4	Appraisal	Training OS	
Yr5	Empl. Law	Seminar DR	

CODE

OTJ: On the job

OS: On site (but off the job)

DR: Day release

EC: Evening class

RES: Residential

The above illustration charts the early years of a production trainee, showing an interest in his own subjects but then beginning to diversify into Personnel – a move which typifies the type of career change that may become more the norm in future. Using a chart such as this is an extension of the record of achievement which has been adopted by the education system for school leavers in past years.

Nearly all professional bodies now require, as a condition of membership, that their members undertake regular updating and training with required levels of time to be spent each year on such activities.

Learning and Skills Council (LSC) Chairman, Bryan Sanderson, stated recently that research demonstrated that businesses that invest an extra £50 per week in training see their profits grow nearly twice as fast as those that do not. The Council's study demonstrated that companies that increased their training budget saw their profits increase by 11.4% whilst those that did not grew only by 6.3%. (Simply retaining 50% of those that would otherwise leave and thus avoiding their recruitment costs, could add substantially to profit.)

Case studies

Motorola estimates that every $1 spent on corporate learning translates into $30 of productivity gains within three years.

Sony claims that a $300,000 investment in training packages reaped $500,000 savings virtually immediately.

Northern Foods in their Fox's Biscuits factory invested £300,000 in their employees who responded by making suggestions that saved £350,000 in a year.

Assessing training needs

The regular completion of an APPRAISAL form for each employee will disclose a multiplicity of training requirements, ranging from an hour's coaching on the job from a supervisor on a particular skill requirement (e.g. to enable an operative to manipulate a machine correctly), to the need for the newly appointed supervisor to attend an intensive course on supervisory skills, or a requirement for a whole department to attend training over a lengthy period in computer skills, etc. Such requirements will be diverse, as will be the timeframes over which the requirements will be

spread. The demands (and any other training requirements) need to be collated onto a Training Plan which needs to show:

1. Business and personnel training needs derived as above.
2. Where the need exists, at a more senior level – by name or position, and at a more junior level – by numbers of a particular grade.
3. The type of training required and how this is to be sourced, and, if appropriate, a pre-determined skill level required.
4. The timeframe, within which the training is to be completed. Training is then carried out in accordance with the plan.

Longer term training needs and plans may feature on subsequent performance reviews which may also disclose a need for greater urgency in accomplishment of the training, and may determine altered needs. As an employee completes each training segment or course, the detail is entered on his personal Training Record, with an indication of its effectiveness.

Young employees

Under the Teaching and Higher Education Act 1998,16-17 year old employees who have not attained academic or vocational standards at school, namely:

- 5 GCSEs grades A-C; or
- one intermediate level GNVQ or GSVQ at level 2; or
- one NVQ or SVQ at level 2.

and who wish to try and attain those standards by following a recognised course of study, must be given reasonable amounts of paid time off to attend such courses. If the course runs past their 18th birthday the time off must be granted until it ends.

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Tribunals

Basis for inclusion

Legal obligation

Background

Employers should try to avoid Tribunals – even if they win (i.e. successfully defend), they lose in terms of the time and costs involved in the defence. Rarely is it possible for employers to obtain any recompense for these costs. Setting up, policing and above all adhering to comprehensive procedures and ensuring accurate data compilation are sound precautions which should provide at least the basis for a sound defence.

The system

Each year around 120,000 employees or ex-employees initiate claims against their employers. Of these only about a half proceed to a hearing – some being settled previously between the parties with or without the input of ACAS, or else are withdrawn for other reasons. Only in a minority of the cases that are heard are the applicants successful – but the costs of case preparation and hearing must be met by the employer.

Although the maximum compensation for unfair dismissal is £55,000 (Feb 2004) very few settlements even approach this figure – the average is around £8000. In discrimination claims where there is no limit, although there have been a tiny number of £1 million settlements, the average settlement is around £12,000.

Although designed as 'laymen's courts' unless experienced in defending tribunal cases, employers may be well-advised to use specialists to do so. Checks should be made to ensure those used have a good track record in defending tribunal cases.

The tribunal

Although (in certain circumstances only) a tribunal can consist of the Chairman only, usually there are three members who have equal status. The Chairman must be legally qualified and is usually a solicitor or barrister. The two lay members represent the 'employers' and the 'employees' interests and are largely nominated either through the Confederation of British Industry and Trade Unions Congress, although recently individuals have been able to nominate themselves. The lay members attempt to reflect the reality of the workplace which may not be something experienced by the Chairman. The tribunal, as initially constituted, will hear the whole of a case. Its composition is random – they may meet again on another case but this is relatively rare.

This being so it can be difficult to set further hearing dates (for example, if the case has to be adjourned ('go part heard'). Being a court of three it is possible for there to be a split decision – but split decisions are quite rare. Decisions of a tribunal can be appealed to the EAT and then to more senior courts.

Putting the case

A tribunal has wide powers in deciding how to hear a case – but must never substitute its own views for those of the employer. The test it must apply in unfair dismissal cases (the largest proportion) is 'was the decision one that would have been made by any reasonable employer'. Cases must be decided in accordance with the law – or how the law is interpreted. Since lawyers are adept at dissecting the law and suggesting novel shades of interpretation this can mean that a tribunal decision could have the effect of changing previously understood meanings of the law. Decisions of each

ET are persuasive only on other ETs, but decisions of the EAT (and more senior courts) are binding on all ETs.

There is no reason why a layperson, familiar with the law and tribunal procedure should not conduct the defence of a straightforward – and even a more complicated – case. However, there is a danger for the inexpert of overlooking salient features and points. Similarly, there is a need to be able to 'put a case across' (including denigrating the applicant's case and destroying the credibility of their witnesses). Conducting an effective cross-examination usually only results from repeated practice. The test is not one of fairness and justice but whether actions have complied with the law. For all these reasons it may be preferable to retain professional advisers – solicitors or law consultants to run the case.

Settlement

Tribunal cases are fought and successfully defended only on the basis of what the law states. Some employers and a few applicants tend to confuse what they perceive to be 'right' and 'justice' with what the law states. Whilst sometimes the parties will not feel they have received justice – they should always feel the law has been correctly applied. For this reason, as well as the fact that for an employer 'even if you win you lose', the possibility of settling rather than fighting a claim should be considered objectively. The main role of the Advisory, Conciliation and Arbitration Service (ACAS) is mediating between parties to prospective tribunal cases in order to try to gain a settlement. ACAS rehearses the facts of the case and reflects the law, to see if the parties can agree a financial or other settlement (e.g. reinstatement) rather than a hearing. The discussions with, and evidence produced to, ACAS during this process are confidential and cannot be shown to the other party or produced at any subsequent hearing, without the permission of the originator. If an agreement is reached through ACAS intervention, then both parties should sign a form (COT1) which will recite the settlement. Having done this the parties should then be precluded from proceeding further with the matter. Employers using ACAS services to settle a claim should make sure every document sent is acknowledged, that the employee confirms that ACAS are acting on their behalf and that the papers are kept for (say) 6 years plus the year in which the claim was settled.

ACAS arbitration scheme

As an alternative to the mainly 'conciliation' aspect of their duties referred to above, ACAS offers an arbitration service which can bind the parties submitting their case to the service. This, it was hoped, would reduce the number of cases being referred to the tribunal system, and provide a quicker and possibly cheaper method of resolving the claims. The danger for employers is that once they have agreed to use this scheme they are committed to it and there is no appeal process. Relatively few parties have used this process.

Worthless claims

If the employer (or their advisers) feels the claim has no merit then this should be made clear in the IT/ET3 and a pre-hearing review should be applied for. Such a hearing is an opportunity for a tribunal to consider the merits of the case. If it feels it has little chance of success then the applicant will only be allowed to proceed if up to £500 is deposited with the tribunal. If the applicant wins the case this deposit is returned but if they lose the deposit is forfeited. Where a case is decided by the tribunal to be 'frivolous, vexatious or misconceived' the tribunal can make an award of costs against the applicant. The maximum award on a tribunal's own authority is £10,000 but awards in excess of this figure (which are required to be confirmed by superior courts) have been made. Warning the employee of the possibility of there being a costs claim may deter some making such claims. The number of claims has fallen since the costs maximum was increased to £10,000.

Procedure

The 21 day time limit for responding to tribunal documentation is strictly applied and those responsible need to deal with the data and requests with urgency and an appreciation of their importance. The process is commenced by the employee or worker (the applicant) completing an IT1 (to be renamed a Claim form). The employer (the respondent) can then complete and IT3 (to be renamed the Response form).

1. All Notices of a Tribunal Claim (forms I/ET1 and I/ET3) must on receipt be passed immediately to (e.g.) Personnel Administrator (PA).
2. PA will immediately assemble the papers concerning the claim and consider whether to resist the claim or consider 'buying it off' – e.g. either directly or preferably via ACAS.
3. Within 2 working days of receipt instruct solicitors experienced in employment law and tribunal cases.
4. Should there be insufficient time for consideration of the claim and for the preparation of a defence, either PA or the solicitors will (in liaison) request postponement of the 21 day deadline for submission of the defence. Such application will be submitted by recorded delivery – the record slip being kept with the papers for the hearing.
5. Check any demands made by the employee for feasibility.
6. In discussion with the solicitors, the PA will determine the grounds for resisting the claim. Such grounds should be as comprehensive as possible covering all items raised by the employee and any others that are relevant.

Note: The whole defence should be recited in the I/ET3. Tribunals are not the place to practice TV style courtroom ambushing using facts not previously disclosed. Further, tribunals may not be prepared to allow alteration of defences on the I/ET3 during the hearing.

7. Solicitors are responsible for submitting the defence documentation (again using recorded delivery) within the postponed time advised. Careful thought must be given to each entry on I/ET3.

   In the event of either the Organisation or the solicitors changing their address after submission of I/ET3 and before the hearing the Tribunal office must be informed – communications from the Tribunal office will be sent to the address stated.

8. The PA will liaise with any representative of ACAS making contact with a view to settling the claim. [The concept of paying in order to be rid of the action – i.e. paying for the nuisance value – will be resisted at all times.] If it appears that the employee has a strong case, the PA may attempt to reach a suitably satisfactory settlement.

9. The PA will assemble all information required by the solicitors, and arrange for witness statements to be prepared. Those involved in the hearing should be requested not to discuss the case within the Organisation. If information is required from the employee, the solicitors will request this. Information requested by the employee will be provided, as long as it does not fall within the exceptions allowed by law.

10. Discovery rules mean each side is entitled to ask for details of evidence the other side relies on. However, the procedure cannot be used as a means to discover all kinds of information in case the items can be used in the case (i.e. what is termed 'fishing'). Neither can this type of cross examination be used in the hearing itself.

11. The use of witness statements during a hearing speeds the process and allows a more careful recital of the witness' words than will normally be attained by question and answer (see below).

12. Agree bundle of documents with other side. This does not mean the sides agree everything in each item – merely that they agree to use one bundle of documents which is much more convenient than two sets.

13. The solicitors will be responsible for notifying the PA of the date set for the hearing and agreeing whether this is convenient, and, if not, for applying for a postponement.

14. PA will arrange for witnesses to attend the hearing and any pre-hearing discussion with the solicitors, and for the preparation of any further documentation requested by the solicitors.

15. Careful attention should be paid to the instructions issued by the Tribunal office and everything should be complied with.

16. Should the decision go against the Organisation, the PA and the solicitors should consider whether there are any grounds for appeal. Unless such grounds are very strong, an appeal will not normally be pursued.

17. After each hearing (regardless of result) the PA will review the events with a view to improving any systems and/or procedures.

    Experience indicates that sometimes the salient points of cases are not exposed and it may need to be left to the tribunal members, via their questions, to probe this. In preparing a defence the crux of the case must be examined and addressed.

Tribunal directions

Prior to a hearing, the Tribunal may issue a number of instructions or directions regarding the administration of the case. These directions must be obeyed, not least since compliance may well shorten the time spent on the case. Many directions will concern documentation required. In litigation the person with the best paperwork stands the better chance of winning. Without good paperwork it can be difficult for an employer to successfully defend a tribunal case. Many cases depend on the quality of witness evidence (which increasingly is provided initially by the reading of witness statements), but this must be supported by written documentation.

Examples of documentation

A. Written witness statements are required by Tribunals. These:

- are a chance to put down in writing all the salient points in order and without the pressure of having to remember and speak them.
- provide an opportunity of drafting and polishing what one wishes to say and presenting it in a logical order and in ones own words.
- must, irrespective of who drafts them, be carefully checked by the person giving the evidence before submission to the tribunal. If items have to be retracted or contradicted it reflects badly on the reliability of the witness. It is essential that the witness agrees with

every word – since their evidence and their credibility stands or fails on the content.

- should have numbered pages and paragraphs and it may aid clarity and ease of reference if the statement is double-spaced.

B. A bundle of documents is needed to supported the testimony of witnesses. A bundles should contain items which:

- explain the Organisation (Organisation chart, list of names and positions of those involved).
- establish the relationship (contract).
- evidence to establish the rules (handbook, rule book).
- establish the dispute (hearing notes, warnings).
- evidence the action (correspondence).
- aid the understanding of the situation.

All entries should be assembled in a logical order, copied on one side of the paper only, numbered consecutively in the bottom right hand corner with an index – and possibly a chronology (and even a synopsis of events) if relevant – provided.

Note: Witnesses should always read and understand the contents of the bundle.

Procedure

1. Hearings usually start at 10.00 a.m. so everyone should be there well before that time.
2. Everyone will be asked to identify themselves and their positions and, if they are witnesses, to state whether they intend making an affirmation or swearing an oath and, if so on which Holy book.
3. 6 copies of any and every paper for use in the tribunal should be handed to the clerk.

4. Until the case is called each party must stay in their respective waiting rooms.

5. Many cases settle at the doors of the tribunal and thus it is possible that the representatives may discuss this possibility at this time.

6. In the absence of a settlement, the parties will be called into the tribunal room. The tribunal members sit at one end, sometimes on a slightly raised platform. In front of their table and to their right and left are two desks – one is for the clerk and the other is the witness 'stand'. In the body of the room is a table for both representatives and the parties. Normally the applicant sits to the right of this table (looking at the tribunal) and the respondent to the left. Behind this table may be several rows of seats for witnesses and onlookers.

   There is an alternative (and more effective) layout which places the witness stand in the centre between the parties and directly facing the tribunal.

7. The chairman will open the proceedings often by naming him or herself and the two lay members and ensuring he has the correct names of the two representatives. If there are any preliminary matters (for example, determining the employer's name and status – company, partnership, etc.) this may need to be investigated before the case begins.

8. The party going first calls its witnesses who in turn go into the witness stand and are sworn in – either by affirmation or by swearing an oath. The evidence they provide to their own side ('evidence in chief') is given first. Evidence in chief is either given by answering questions posed by their side's representative or by reading a witness statement – or by a combination of both. If the tribunal (as almost certainly it will) specifies that written witness statements must be supplied it is unwise to ignore this.

   When each witness completes their evidence in chief, the other side has an opportunity of cross examining them and finally the tribunal members may ask their own questions. Alternatively, some tribunal chairmen will allow the tribunal members to ask questions

– particularly of points of clarification – during the giving of evidence (as well as at the end). Once a witness has finished his evidence he may ask to be released from the tribunal proceedings.

9. Other witnesses follow until the whole of one parties' case has been heard. The other party then puts its case in the same way.

10. Once both parties have completed their evidence, they will be invited to make submissions and a summation of their case – possibly quoting from the decisions in previous cases etc., to support their arguments.

11. That concludes the hearing and the tribunal retires to a separate room (or uses the tribunal room itself in which case the parties retire to their waiting rooms) to reach its decision.

12. The hearing reconvenes in the tribunal room for the chairman to announce a summary of the decision verbally, stating that a written decision with full reasons will be sent to the parties within a few days. A decision in favour of the applicant will mean that a remedy (usually compensation) must be calculated. This may mean the hearing is reconvened there and then to decide the amount and both side have a chance to argue about this. Alternatively, if it is late in the day further dates may have to be set for this purpose.

13. At any time during the hearing the parties may ask for an adjournment, possibly to try to reach a settlement or to take instructions. The tribunal too may wish to adjourn.

14. A tribunal is a court and when the tribunal members enter or leave the tribunal room, it is courteous for those present to stand – as would be the case in a more senior court.

Witness guidance

Giving evidence, particularly when being cross-examined, is not always easy and, with some representatives, may be somewhat unpleasant. What the tribunal needs to hear is the witness's recollection of events. Since very often the evidence will be given several months – even years – after the events, complete and accurate recollection of all events may be impossible.

Giving evidence

1. You will be asked when you arrive at the Tribunal whether you want to swear the oath on a Holy book or to make an affirmation.
2. Before you start to give your evidence you must affirm or take the oath (the form of words will be given to you).
3. Read your witness statement carefully and clearly.
4. You may be asked some further questions by our side.
5. You will need to answer questions under cross-examination by the other side. Sometimes it will be the tone of the question as much as the content that can irritate and distress.
6. Take your time. Try to keep calm.
7. Don't expect to have total recall of everything – if you cannot remember, say so.
8. Try not to get distressed – keep taking deep breaths and don't speak unless your breathing is under control.
9. If you are asked a question you do not understand – say so.
10. If they repeat the answer you have given but with a different intonation or twist don't be afraid to interrupt and say 'I'm sorry that's not quite what I said.' On the other hand try to avoid arguing (and contradicting yourself).
11. Tell the truth at all times.
12. Don't take notes (other than your witness statement and the bundle) to the witness stand – unless you have the permission of the chairman.
13. Don't dress up for the occasion. Wear your ordinary working clothes – but not overalls. Use your ordinary voice and vocabulary.
14. After the other side have put their questions to you, members of the tribunal may also ask questions.
15. Finally, both representatives may need to ask you further questions as a result of questions asked by the tribunal.

Decision

The decision of the tribunal is usually announced at the end of the hearing (although on occasions the decision will be 'reserved' and sent later in writing) – as indeed all verbal decisions are similarly confirmed a short time after the hearing. If the applicants win, the tribunal may decide the level of compensation which may require further evidence regarding earnings after dismissal etc. Parties should be prepared to present such evidence. Even a decision regarding any cash settlement is not necessarily the end of the matter since there could be:

- an application for review (on the basis that a point was overlooked by the tribunal); or
- an appeal (which must be lodged within a set time limit).

Advice should be taken.

Case studies

In *Anglia Home Improvements Ltd v Kelly* the tribunal by a majority of 2 to 1 (the Chairman being in the minority) found the employee had been unfairly dismissed. The Court of Appeal said that it was a gross error of law for members to substitute their own subjective view to supplant the objective decision of the employer. It went that a decision on unfair dismissal should be unanimous. Where there was no unanimity the Chairman should reserve the decision so that he could circulate his reasons to the other members to find out whether they would agree. This would give them an opportunity to change their minds.

Note: In July 2004 the CBI, reviewing the proposed increase in retirement ages and the possibility of an extension of rights for those aged between 65 and 70, commented that this could lead to many more tribunal cases which were 'already costing UK business £163 million each year'. If there are 50,000 cases this generates an average of £3,260 per case which looks a low estimate and may exclude the cost of what can be a considerable amount of time expended in preparing a case, attendance of witnesses etc.

TUPE

Basis for inclusion

Legal obligation

Background

TUPE is the simple acronym given to what has become an exceedingly complex piece of legislation even though its basic premise is simple. The Transfer of Undertakings (Protection of Employment) Regulations 1981 are the UK's interpretation of the EU's Acquired Rights Directive. The legislation seeks to protect employment so that if the work on which the employee is wholly engaged, is an economic entity and, is transferred to another owner, then the employees have the right to transfer 'with the work' and their rights and benefits must not be altered by reason of the change of ownership.

Employee rights

Where an economic entity is transferred from one ownership to another, employees working wholly within that entity have two rights:

a) to transfer with the work (thus giving the title of the regulation its meaning – protecting the employment when an undertaking is transferred);

   OR

b) not to transfer – that is to contract out of the situation in which case they are held to have dismissed themselves (effectively they resign) without compensation (although in a recent case it was held that in certain circumstances, employees not wishing to transfer might be able to claim unfair dismissal against their original employer).

The '2005' revisions

The UK was due to implement revisions of TUPE by July 2000. Draft amendments were published in Autumn 2001 but at the time of writing these were still being refined and no date has yet been announced for their introduction although this is unlikely to be before 2005.

a) It is proposed that transferred public sector employees rights would be protected by requiring these transfers to be subject to the Cabinet Office statement 'Staff transfers in the Public Sector' (Jan 2000), i.e. that all terms and conditions must be preserved. (If this is enacted it is difficult to see how any public service work could be transferred to the private sector, since the cost of preserving the pension rights of these employees is prohibitive for most, if not all, private sector employers.)

b) The second proposal addresses the vexed question of transferring employees rights when there is a change of contractor required by a third party. Although the problem is exposed there is little clarification of the present confused situation. It is possible that what may be required is that TUPE will automatically apply to all contractor changeovers.

c) The requirements may be extended so that pension rights would be brought into the preservation requirements. (Again this would appear on costs to rule out the concept of transferring public sector employees to the private sector.)

d) There would be enhanced information regarding terms and conditions required to be given by transferor organisations to their employees.

e) Input is also required regarding changes to contract terms post-transfer.

Case studies

Currently the ECJ ruling in the Daddy's Dance Hall case indicates that any change to an employees contract which is required as a result of the transfer breaches the directive.

Similarly, in *Viggosdottir v Islandspostur (Iceland Post Ltd)* a manager who was transferred under the protection of the Acquired Rights Directive was dismissed on grounds of redundancy. She claimed her redundancy settlement had to be calculated on the basis of her 'pre-transfer' contract which had superior terms to those she was now working under. The court said that employees can never waive rights conferred on them by the directive by agreeing changes to their contracts if the reason for the variation is the transfer itself.

The current proposal is that changes to a contract should be allowed where there are 'economic, technical or organisational reasons' (ETO). Use of an ETO already exists as a way in which a transferee organisation can refuse to accept a person who would otherwise have a right of transfer.

Case study

In *RCO Support Services v Unison* the Court of Appeal stated that all the facts of the case should be considered (the 'multifactorial' test) before determining whether employees were covered by the TUPE protection.

Benefits to be preserved

The range of benefits under a TUPE transferred employees contract that must be preserved by the new employer is wide.

Case studies

In *Beckman v Dynamco Whicheloe Macfarlane Ltd* the ECJ held that early retirement benefits had to be preserved and thus the purchaser retained liability for these benefits. Only benefits paid from the time an employee reaches the end of his working life (e.g. pensions) do not have to be preserved.

In *Martin v South Bank University* the ECJ held that benefits conditional on agreement of the employer also had to be preserved and provided on the same basis by the purchaser. The employees could not waive these rights – which echoes the comments in the Viggosdottir case above.

Consultation

Where there is a TUPE transfer both employers must consult with their employees about the matter.

WARNINGS

1: In The Sunday Times in autumn 2003, a partner in a leading firm of insolvency practitioners points out that 1 in 3 businesses (that they try to rescue) closes because those interested in buying them (and thus preserving jobs) are not prepared to accept the obligations they would inherit with the transferring of employees under the TUPE. Insolvency practitioners, Begbies Traynor, state that 'tens of thousands of people are thrown out of work unnecessarily every year because of TUPE.

Under employment legislation likely to be effective before the end of 2004, those employed by organisations facing bankruptcy, insolvency or liquidation will be excluded from the TUPE 'transfer on the same terms' requirements.

2: Employees transferred from Sainsbury's to an offshoot of Pitney Bowes under a TUPE transfer were members of Sainsbury's share scheme under which they could take either shares or cash. After the transfer they claimed that they should still obtain the appropriate number of Sainsbury shares (which they argued their new employer should buy in the stock market) and a tribunal agreed. On appeal the EAT held that this was not necessary as it gave rise to an absurd interpretation of the law but that **'they would expect an equivalent scheme to be negotiated with the employees or their representatives (by the new employer)'**.

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Unions

Basis for inclusion

Commercial necessity with legal obligations

Background

Organising labour via membership of Unions has been a right for over 100 years, although it was only in the 1960s that the Unions received their real power boost with the passing of a number of 'Union friendly' laws. This led to an abuse of power and to a reversal of some of those powers during the 1980s. Some of those reversals have themselves been reversed in recent years but to a great extent, the battles Unions fought have largely been won with the introduction of numerous employee rights. There were more new employee rights introduced between 1998 and 2002 than in the previous 20 years.

Commentary

Under the Employment Relations Act 1999 employers with 20 or more employees must grant automatic trade union recognition where at least 50% of those in the unit are union members. In addition, unions that have a minimum threshold of 10% of the employees in the bargaining unit and are 'more likely than not to win a ballot', can also make a claim for recognition. Recognised unions will seek to nominate a 'bargaining unit', although their nomination can be resisted by the employer and there may then be a recognition case to be decided by the Central Arbitration Committee. Being able to nominate a bargaining unit could be a powerful weapon in a Union's

armoury, since if all the members of the engineering department of a factory were Union members, in the event of a dispute there would only be a need for the engineers to strike. Their absence would almost certainly mean the whole factory would need to close. The logical bargaining unit for the Union would be the Engineering Dept.

Any employee dismissed because of their participation with lawful industrial action within 8 weeks of such action, has a right of access to a Tribunal where such a dismissal will be automatically unfair and subject to up to the maximum compensation of £55,000 (Feb 2004).

Right to be accompanied

The same Act gave to those attending a disciplinary or grievance interview 'which could result directly in the employer administering a formal warning to [the] worker or taking some other action in respect of him/her', a legal right to be accompanied by a representative and protects those acting as representatives from any sanctions. From October 2004, this right is extended so that an employee in those circumstances has a right to written details of the alleged offence 'a reasonable time' before the hearing. Under the Employment Relations Bill the rights of the person accompanying the employee are to be extended so that they can ask questions and put forward arguments (which under previous arrangements they could not do directly – only advise the employee to do so).

Discrimination

The Employment Relations Bill is to outlaw discrimination against union members by employers denying them access to benefits enjoyed by non-TU employees or making any inducements the effect of acceptance of which would be them giving up their right to be a member of a union.

Case study

In *Wilson & ors v UK* the European Court of Human Rights stated that inducements to employees to give up Union members infringed the employees rights to freedom of association.

Recognition

Where a Trade Union demands and is given recognition there will usually be a recognition agreement. Indeed, this is advisable since it not only sets out the basis for recognition (that is the range of items on which the Union can represent its members, for example, their pay) for the benefit of the Union, it also enables the employer to refer to the agreement if, for example, the Union wish to expand their recognition to include other matters. Traditionally, Unions tended to concentrate their efforts mainly on pay, but nowadays there is a movement to include negotiation re benefits, training, redundancy etc. In many ways setting out such arrangements in advance may avoid problems in the future. With some exceptions, Unions are more aware of the economic realities than was the case in the 1960s.

Learning representatives

Legislation has also introduced the right for Unions to appoint Learning Representatives (ULR). ULRs have to be nominated by their Union to the employer and are expected to give advice information and encouragement about training and learning to other employees. However, each employer can formalise the manner of the provision of such advice – and set down the time allowed (with pay) for such work.

Union members rights

a) Shop stewards

It is usual for employees to elect shop stewards or mothers/fathers of chapel. When elected these stewards are recognised by the Union and then become entitled to certain rights:

- The right to reasonable time off with pay to carry out their normal duties on behalf of their members. The duties include matters concerning terms and conditions of employment, recruitment and non-recruitment, suspension or dismissal of members, allocation of work, discipline, membership or non-membership of a union, facilities for union officials and the mechanics of negotiation and consultation. They may also be entitled to paid time off to collect Union subscriptions. Since this can be very time-consuming many employers agree to deduct such subscriptions via the payroll on behalf of the Union. A deduction authority needs to be completed by each member. (An advantage of performing this task is that the employer knows the extent of Union membership.)
- The right to reasonable time off with pay for training in those duties. This paid leave would not normally – unless covered in the Union/Employer agreement – cover visits to the local Union office, conferences etc., although allowing a reasonable amount of unpaid time off for such visits might be advisable.
- The right to accompany a Union member at any disciplinary or grievance hearing.

b) Union Learning Representatives

- The right to reasonable amounts of paid time off.

c) Members

- The right to join (and not to join) a Union.
- The right to reasonable amount of paid time off in working hours to take part in Union activities (e.g. voting on election of shops stewards, voting whether to take industrial action – but not during any such action).
- A ban on any intimidation by unions or employers during statutory union recognition ballots.

Information

Employers are required to provide such information as would be necessary to enable Unions to negotiate – in other words, statistics that would facilitate meaningful discussion about the effect of wage increase demands. Under the proposals for WORKS COUNCILS (WCs) far more information would need to be provided on an ongoing basis. However, for the purposes of WCs the entire workforce must be represented, not only Union members.

New proposals

Under the Employment Relations Bill 2003 there would be:

- simplified rules regarding industrial action ballots;
- employer's arguments against the selection of a bargaining unit proposed by a Union must be taken into account by the CAC;
- increased protection for strikers; and
- the role of the person accompanying an employee at disciplinary or grievance hearings is to be extended.

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Vehicles

Basis for inclusion

Commercial requirements

Potential legal liability

Background

Often an applicant's skill (or lack of it) as a driver (even where driving is an integral part of the duties) is virtually taken for granted. A substantial number of companies do not even bother to check whether the applicant has a valid driving licence before giving them control over a company asset worth many thousands of pounds, and with the capacity to incur thousands more in liabilities to third parties.

Commentary

Where the employee is required to drive regularly as part of his/her employment, further enquiry should be made both of their licence status and driving capability. In trying to ascertain the driver's record, however, employers should be aware of the implications of the Rehabilitation of Offenders Act which 'time expires' certain offences – hence the particular phrasing of the questions in the following Driver Details form.

DRAFT DETAIL FORM

DRIVER DETAILS

Name of driver _____

Dept _____Car level _____

Licence type _____Date of issue _____

In the last 4 years have you received an endorsement (or penalty points) for a driving offence? YES/NO*

In the last 5 years have you been fined for a driving offence? YES/NO*

In the last 7 years have you received a prison sentence of less than 6 months in respect of a driving offence? YES/NO*

In the last 11 years have you received a penalty in respect of a drink/driving offence? YES/NO*

Have you ever had vehicle insurance cover refused? YES/NO*

If the answer to any question is YES, please provide full details:

_____

_____

Please confirm that the Driving Licence you are submitting to us is the only UK licence you hold YES/NO*

If the answer is NO please provide full details

_____

_____

_____

Have you taken a defensive or advanced driving course? YES/NO*

If so, please state where and when:

_____

Are you prepared to take a defensive or advanced driving course at the company's expense? YES/NO*

Is any member of your family likely to drive the car? YES/NO*

Please see car policy for restrictions on such use, and give full details of the proposed driver(s) who will also be required to complete a copy of this form.

Signed _____Date_____

* Delete whichever is inapplicable

Note: This form must be completed and signed by the employee/ driver personally. Failure to provide accurate answers, will be regarded as gross misconduct. The information given is the basis on which insurance cover is provided, and inaccurate information may lead to the insurer refusing to accept a claim and/or could involve the driver in personal liability.

OFFICE USE ONLY

Licence inspected by _____on_____(date)

New driver form issued to subject's family (specify)

_____ on_____(date)

Family form(s) returned on _____(date)

Policy issued to driver/ family on _____(date)

Took defensive driving course on _____(date)

Any comments of course supervisor _____

_____

POST EMPLOYMENT LICENCE(S) INSPECTION

Manager to sign and date as confirmation that licence has been inspected. This procedure may also be required for members of the employee's family who are allowed to drive the company car.)

2005 _____ 2006_____

2007 _____ 2008_____

2009 _____ 2010_____

DETAILS OF ANY CONVICTIONS FOR DRIVING OFFENCES WHILST IN THE COMPANY EMPLOY

Details of conviction_____

Details of penalty(ies) imposed _____

Details of conviction_____

Details of penalty(ies) imposed _____

Details of conviction_____

Details of penalty(ies) imposed _____

An increasing number of employers require drivers to undertake a driving test before a vehicle is allocated, as well as defensive or advanced driving courses, often arranged by their insurers or brokers. The accident record of companies who undertake this investment is usually improved and insurers may offer a premium reduction provided all drivers take the course.

Delineating responsibility

Giving this attention to car allocation should raise awareness that these are matters of considerable concern to the Organisation. This awareness should then engender additional care in driving, which can in turn lead to reduced risk and accident incidence. Details of the driving convictions disclosed by the form completion may need to be relayed to the insurers who may impose special restrictions, e.g. additional excess, etc.

A policy covering both the allocation and administration of company cars will continue the raising of awareness of the need for care in using the company car, and can also help reduce accidents and waste, and remove the possibility of dissent when incidents occur. The policy attempts to cover all situations that may arise and to set out procedures to be followed.

Draft policy

All drivers of the company's cars/vehicles are bound by this policy, and their agreement to the contents of this policy is inherent in the allocation and driving of the car.

Allocation

Cars will be allocated on the following basis:

a) *Main board: by virtue of office to pre-determined benchmark. Allocation includes private petrol cost.*

b) *Subsidiary board members: by virtue of office, to predetermined benchmark of [model]. Allocation includes private petrol cost.*

c) *Managers, where the job requires a car, to benchmark of [model]. Allocation does NOT include private petrol cost.*

d) *Employees, where the job requires a car, to benchmark of [model]. Allocation does NOT include private petrol cost.*

e) *Certain posts within the Sales Dept., may qualify for cars outside this policy, due to extensive mileage and/or customers' entertainment requirements. Allocation does NOT include private petrol cost.*

Drivers' details

Before driving an Organisation car, all drivers (including members of an employee's family – spouses, partners, fiancées, etc. being regarded as family in this context) will be required to complete a Drivers Details form. Such information will form the basis of the insurance cover for the vehicle and driver, and must be provided with absolute accuracy. Non-, or faulty, disclosure of information, from whatever source, may be regarded as gross misconduct of the employee and could lead to dismissal.

Licence inspection

The licences of all drivers will be regularly inspected. Any employee/drivers who lose their licences must inform the Organisation immediately. Employees must notify the company of all convictions related to driving offences at the time of the regular licence inspection. Drivers will be required to confirm their licence is the only UK licence they have.

Additional drivers

Members of the immediate family of each company car driver, provided they are over 25, may drive the car, subject to completion of a Drivers Details form and regular inspection of driving licences. The employee is responsible for notifying the company of convictions related to driving offences of such persons when submitting their licences for regular inspection. No other person may drive a company car without the prior written permission of a Director.

Excess recovery

Should the insurers of the fleet impose an excess, increased excess, or any extra premium(s), in respect of an additional driver of a company car, such cost will be the responsibility of the driver concerned.

New drivers

During their first year of employment, all drivers will be required to bear an excess of £500 in the event of accidental damage for which they are responsible. Excesses in respect of accidents which fall due to be recovered may be deducted from salary.

Note: To protect the Organisation from subsequent claims for unauthorised deduction from salary – the employee should be required to sign this policy.

Private use

Company cars may be used by their drivers for private business, including holidays, provided the company has previously authorised such use in writing. If the car is to be taken overseas, the driver will be responsible for the cost of any additional insurance cover required, as well as the cost of Vehicle Recovery insurance, such as the AA 5 Star package.

Accidents

All Organisation cars will carry a Vehicle Folder (VF) at all times. In the event of an accident, the forms contained in this folder must be utilised immediately. Drivers are expected to make themselves familiar with the contents of this folder before they need to refer to it (i.e. following an accident).

Loss of licence

In the event of a company car driver losing his/her licence, this fact must be made known to the Organisation immediately. In respect of cars allocated by virtue of office, the driver will have the option of retaining the car to be driven by their spouse or other approved driver, or to lose the car and receive a modest level of compensation determined by the Board on an individual basis. In respect of cars allocated because of the demands of the job, the car will be withdrawn and the question of the employment of the driver may need to be ascertained individually.

Replacement

Cars will be replaced after 3 years or 50,000 miles, whichever occurs first. Cars which have been repaired following a serious accident may be replaced at the discretion of the Board.

Leave of absence

Organisation cars must be surrendered during leave of absence.

Note: It would seem to be reasonable to expect a car to be surrendered during leave of absence – although the situation regarding employees taking parental and/or family leave needs to be considered at the relevant time and specific advice taken. Similarly, any suggestion that the car should be surrendered during maternity leave will depend on the wording of the car allocation. Where the car is essentially a tool of the job with no allowance whatever for it being used for a driver's private needs (i.e. it is collected on attendance at work and returned before the employee leaves for the day), it may be acceptable to withdraw it. Where the car allocation is contractual and allows private use (even where this must be funded by the employee) withdrawal would be most unwise (since it would entail an illegal withdrawal of a contractual benefit).

If an employee is placed on 'GARDEN LEAVE' (that is required not to work during the expiry of a notice period or a period during which (s)he must not work for a prospective employer), they should be allowed use of a contractually allocated vehicle. This was the decision in the tribunal appeal case of *Whittle Contractors Ltd. v Smith*. Alternatively, the two parties could agree a cash sum in substitution for such use.

Upkeep

Drivers are expected to keep the car clean, maintained in accordance with the maintenance schedule for the vehicle, and in a proper, safe and road-worthy condition at all times. Drivers must confirm that this is the case each time an expenses claim form is completed and submitted for payment.

Expense reclamation

All expenses incurred by the driver as a result of the operation of the car on company business (plus such expenses incurred as a result of private business where this is to be borne by the company) must be claimed on an expenses claim form.

Operation of company or own vehicle

To cover as wide a system of car driving as possible it might be advisable for employers to require all drivers to sign to acknowledge receipt of a driving safely clause.

Driving safety – and driving safely

All drivers of company vehicles as well as all those driving their own or other vehicles on Organisation business, MUST adhere to the following rules:

1. You must at all times comply with every law affecting such driving and road use. Failing to observe this requirement could result in a loss of insurance cover and you being made personally liable for loss caused.
2. Tiredness causes 20% of all road accidents and when driving in excess of [100] miles in one stretch you should ensure you take a break of at least 15 minutes – with light refreshments. The cost of the latter [to a maximum of £….] will be borne by the employer.
3. Mobile phones may not be used when driving unless via a hands-free system. Even with such a system it is preferable to stop (but not on the hard shoulder of a motorway) to take a call.

[Or: Drivers on their employer's business should ensure their mobile phones are switched off whilst driving. They should also stop regularly (as referred to above) and during such stops could use the time to check and reply to messages left on the phone.]*

4. If, in addition to your working day, you are required to drive in excess of [3 hours] you should plan the day so that suitable time for rest is made available – and take a break as suggested above.
5. If you finish working and are in excess of [100 miles of X hours from home] you should book into a Hotel for the night. The charge for this (including a light meal and/or breakfast should not exceed [£.....]. To ensure compliance with this clause every effort should be made to pre-book the accommodation.
6. Specific advice should be taken regarding driving when prescribed medication that can cause drowsiness.

Failure to observe these guidelines will be regarded as gross misconduct.

* The Police state that mobile phones (hands free or not) cause about 20% of accidents. If an employer requires employees to always have their mobile phones switched on and an employee has an accident whilst talking on the phone (even if hands free) the employer might be able to be held responsible as a result of their instruction.

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Wage payment

Basis for inclusion

Contractual obligations

Potential legal liability

Background

For both legal and practical reasons, details of the amount or manner of calculation and time of payment of wages must be included in the CONTRACT. Employers also need reliable and accurate systems for evidencing and recording details of payment and ancillary matters and changes thereto (not least to comply with the requirements of the WORKING TIME and NATIONAL MINIMUM WAGE regulations). The strict rules regarding deductions from wages must also be observed.

The system

The appointment (and changes in appointment – wage increase etc.) of each employee needs to be evidenced to the employee and internally. Using self-carboning or computer generated sets of forms allows:

a) the creation of several identical records which can be used to notify all interested parties; and

b) the accurate recording of required data and changes.

An engagement form can be used to record all the data required of a new starter, and, since it requires a signature also acts as the 'authority to pay' to the wages department.

ENGAGEMENT FORM

Name _____

Address _____

_____

Telephone _____

Date of birth _____

Start date _____

N.I. No. / / / /

Rate of pay _____p.w./p.a.

Department _____

Job _____

Grade _____Hours _____

Probation ends _____Review (if any) _____

P45 attached/follows* _____

CF383 attached/follows/n.a.* _____

SSP(1) attached/follows* _____

P38(s) attached/follows/n.a.* _____

Bank Branch _____

Code A/c no. _____

Additional information _____

_____

Prepared by _____

Approved by _____

Authorised by _____

Copies: Top: Payroll, 1st: Employee, 2nd: File

A similar form can be used to authorise and evidence changes to the facts already on record.

CHANGE OF CONDITIONS FORM

NAME _____

Department _____

Nature of change _____

Effective from _____

Address change _____

_____

Job change _____

Salary/wage change _____

Marriage on _____

Name changed to _____

Transfer from _____(dept.) to _____(dept.)

Termination due to (give reason) _____

_____

Holiday pay on termination. Please pay _____(days).

Other payments on termination. Specify _____

_____

Transfer to credit transfer _____Bank

Branch Code No. A/c no. _____

Other information _____

_____

Prepared by _____

Approved by _____

Authorised by _____

Copies: Top: Payroll, 1st: Employee, 2nd: File

Without forms such as these, backed by rules that only by such authorised forms should there be any payment (or changes to levels of payment), fraud can be encouraged.

Case study

The Managing Director visited sites throughout the UK, unannounced, on a genuine 'walking the job' basis . A new recruit told him that she could not understand why whenever the weekly wages sheets for her depot were returned, two extra names had been added and then crossed out. Enquiries revealed that the wages office manager and his deputy had created these 'ghosts on the payroll', paying the 'wages' for the ghosts into their own bank accounts.

Computerised systems can be programmed to provide a checklist each week or month showing all changes. These lists of changes can then be compared with the signed 'Engagement' and 'Change of Conditions' forms and any discrepancy investigated.

Making payment

Increasingly, wage and salary payments are made by credit transfer or by cheque rather than by cash. Employees being paid in cash should be persuaded to have wages paid by credit transfer. Carrying large sums of money is an invitation to thieves and muggers, and precautions are advisable. It is not unknown for employees to be mugged immediately outside their employers' premises on pay day, particularly at Christmas or immediately before a holiday shut-down when multi-weeks pay may be handed over. Even though such an incident takes place outside an employer's premises, there can be moral pressure put on the employer to replace the cash. A receipt and warning such as this puts employees on the alert for such instances.

WAGES RECEIPT FORM

Name of employer _____

Department _____

Name of employee _____

Ref. number_____

I acknowledge receipt of my wages amounting to [sum] in respect of the [period] ending [date] and in accepting delivery, hold [employer] harmless from any subsequent claim that may arise in respect of any loss.

Signed _____

Dated _____

If another person is to collect the wages on behalf of the employee (for example, during sickness), an authority should be obtained from the employee appointing another to collect. If the employee's signature is unknown to the company, the signature should be witnessed by a person other than the person due to collect the wages – and preferably by someone known to the employer.

To [Employer]

I [name, address, clock or other number, department] hereby authorise [name] of [address] who is [relationship to employee] to collect my wages and other payments due to me for the week/month ending [date]. As well as producing this letter of authority, [name] will also produce evidence of identity. I hereby hold you harmless from and indemnify you against any claims that may result from your carrying out the instructions contained in this letter.

Signed

Witness

The person collecting the wages should be asked to sign a receipt and to surrender the authority.

Credit transfer

Persuading employees to switch from cash payment can be difficult, although of course, this form of payment can be made compulsory on new employees. When trying to gain unanimous agreement to such a transfer, there tends to be a small minority of employees who refuse to agree. Enticements such as attractive prizes for a draw, the only participants in which are those who have agreed to change, may help but eventually one relies on individual opinion or attitudes.

Deductions from pay

Employees have a right to receive their wages or pay subject only to statutory deductions such as 'pay as you earn' taxation and national insurance contributions, certain other Authorised items and any item they have previously Authorised. Items that are included in the 'Authorised items' category would include Attachment of Earnings orders issued by Courts, and Deduction from Earnings orders issued by the Child Support Agency. Employers must make such deductions as instructed. The Lord Chancellor's Dept. (as it was then known) has issued a guide to the administration of Attachment Orders for employers. 'Attachment Orders – a handbook for employers' is available from Lord Chancellors Dept., 6th Floor, Southside, 105, Victoria St., London, SW1E 6QT). When such deductions are made, the employer can make a charge of £1 (50p in Scotland) per deduction.

Allowed deductions

Other than the above, deductions can only be properly made if the employer holds an authority relating to the deduction signed by the employee or the deduction is authorised by the employee's contract (Employment Rights

Act 1996). Any deduction made without such authority, even though the amount may be owed by the employee to the employer, cannot be recovered in any other way. There needs to be a rule that clear written authority signed by the employee must be obtained before making any deduction.

Case study

In *Pename v Petterson*, the employer stated in a letter of offer that if the employee 'wished to terminate employment, then a week's notice must be written out and worked. In the event of default, a week's wages will be forfeited'. Despite this rule also being explained during his recruitment, when an employee left employment without notice, and the employer withheld a week's pay, the Employment Appeal Tribunal held that it was an unlawful deduction. The point was that the employee had not given his specific agreement in writing to authorise the deduction.

Presumably, had the employee actually signed his agreement to such a clause in the contract documentation (rather than simply being given a copy), then the deduction would have been authorised and justifiable. Contract wording must be drafted so that clear authority is granted to the company specifically to deduct such sums *from wages*. Stating 'in the event of a termination of employment for whatever purpose, the employee will be liable to repay the cost of training estimated as [sum]' does not give the employee a right to deduct such an amount from wages, **even** if the employee signed the paper on which the words appeared. The wording would need to be extended to include specific authority to deduct from wages, for example, 'and I expressly authorise by signing this [contract] [the employer] to deduct up to such a sum from any monies due to me, including pay, holiday pay, etc., on such termination'.

Authority

In every case where deductions are or may be made from an employee's wages, employers should ensure that they obtain a signed authority from the employee specifically referring to the item.

WAGES DEDUCTION AUTHORISATION FORM

Name _____

No. _____Dept _____

I hereby authorise [employer's name] to make the following deduction from my wages in the manner and for the reason(s) stated, with effect from [date]:

a) [Union subscriptions of £ per week. Please pay these to the [ABC Union] in the manner agreed between the Organisation and the union].

b) [Fees of £ per week being the cost of membership of the [employer's] Sports and Social Club.

c) [Pension contributions as may from time to time be required in accordance with the rules of the Pension scheme which I joined on [date].]

d) Other deductions [provide full and specific details, possibly including the number of deductions, amounts, dates, etc.]

Signed _____

Date _____

Witness_____

A similar form could be used to authorise cessation of such deductions, whilst the fourth category could be used in a variety of cases including the recovery of LOANS and so on.

Recoveries

As well as making regular payments, such as subscriptions willingly entered into by the employee such as are covered by a), b) and c) above, employees may be required by their employer to repay loans or even make good stock/cash deficiencies. The latter requirement is particularly the case in the retail trades, where contracts often allow for recovery of stock and/or cash deficiencies.

Case study

In *Discount Tobacco & Confectionery v Williamson*, the EAT stated that the value of stock/cash deficiencies can only be recovered where the date of the authority pre-dates the incidence of the actual loss.

Ideally, therefore, any such authority needs to be in the contract documentation, which itself is issued on or before the date work commences and it can clearly be shown that the employee indicates agreement to the clause.

Overpayments

Where an overpayment of wages or other sums has been made, an employer may not have an automatic right of recovery. Indeed, if the employee genuinely believes that the amount received by him did belong to him/her, (particularly if, for example, on querying it, he was told by the wages department that it was correct) then it may be impossible for the employer to recover the amount from the employee.

Case study

In *Murray v Strathclyde Regional Council*, the EAT held that an employer had no automatic right to deduct an overpayment without authority.

Each overpayment should be investigated on an individual basis. Further, where under the Employment Rights Act an employer is lawfully entitled to reimbursement, this does not, of itself, grant a right to deduct the amount owed from the employee's wages. A specific signed authority (such as that set out below) should be obtained so that the overpayment can be reclaimed. It may also be wise to allow time to recover (that is, not to try to reclaim the whole overpayment in one deduction, particularly if the sum involved is of an appreciable size). Waiving any interest payment in respect of the time that the employee enjoys the use of the money may help obtain a signed authority.

I hereby authorise you to make [number] deductions of [amount] from my pay commencing [date] in order to repay the amount of [sum] overpaid to me in my wages in the period [dates].

Signed

Attachment of Earnings Orders

Such payments to a third party (usually the Court) from an employee's earnings must be made (under force of law) from pay after deduction of tax and NI, and are usually made in respect of:

- maintenance to former wife and/or family;
- fines levied by a magistrate's court;

- contribution to legal aid ordered by a magistrate's court;
- a judgement debt as ordered by a county court;
- contribution payments to an administration order (which groups several debts owed by the employee) made by a county court; or
- non-payment of council tax.

Employers are allowed to charge employees £1 (50p in Scotland) for each deduction made.

Deduction from Earnings Orders

The Child Support Agency which was set up under the Child Support Act 1991 has authority from the Secretary of State for Social Security to issue Deduction from Earnings Orders requiring employers to make deductions from employee's wages. Two figures are stipulated in the order – a normal deduction and a protected income deduction. Where wages are too low to allow the deduction of the normal amount, then the (lower) protected amount must be deducted. The shortfall must be carried forward and collected when wages allow. Some orders are made on a variable amount basis – that is the deduction varies in accordance with the amount earned. The onus is placed on the employer to explain the operation of deductions orders to the employee.

Illegal overpayments

Where an employee has obtained an overpayment illegally, the employer may be able to withhold other sums due to the employee in whole or part satisfaction.

Case study

In *SIP (Industrial Products) Ltd v Swinn*, the employee dishonestly obtained over £2,000 by altering fuel receipts thereby inflating his EXPENSES, a charge to which he subsequently pleaded guilty in a magistrates court. When he was dismissed, he was owed £457 in unpaid wages and holiday pay which the company withheld to offset its losses. The EAT held that Tribunals have no jurisdiction to consider whether an employer has a general right to seek reimbursement of such an overpayment, and allowed the employer's appeal against a Tribunal decision that the money should be paid.

An employee's acknowledgement that there is an amount due to the employer may be sufficient evidence to obtain settlement in court but is not sufficient to deduct the amount from wages, unless it states 'by deduction from wages'. This is particularly pertinent when demoting an employee and thus requiring them to take a pay cut and/or requiring them to work shifts without payment (as a sanction against a disciplinary offence) (See DEMOTION). To avoid any suspicion of doubt, authorities which clearly reflect the intent that pay can be reduced should be signed by the employee.

Whistleblowing

Basis for inclusion

Employees legal right

Background

The Public Interest Disclosure Act (colloquially known as the 'whistle-blowing' Act) provides protection for those that report, or bring to the attention of the authorities, wrongdoing or the covering up of wrongdoing in their organisations after their internal protestations have been ignored.

Coverage

The Act has been described as a 'whistleblowers' charter, although relatively few may be able to rely on the protection it provides. It covers 'workers' – thus including employees and the self-employed, as well as agency workers and the like, and Crown servants. Protection is given to those making certain 'qualifying disclosures'. A qualifying disclosure is any information which tends in the reasonable opinion of the worker (which will be an objective test in each case) to show a relevant failure. The relevant failures include:

- A criminal offence has been, is being or is likely to be committed.
- A miscarriage of justice has occurred, is occurring or is likely to occur.
- Someone has failed, is failing or is likely to fail to comply with a legal obligation to which they are subject.

- Health and/or safety of any individual has been, is being or is likely to be endangered.
- The environment has been, is being or is likely to be damaged.
- Information relating to any of the above has been, is being or is likely to be deliberately concealed.

Course of action

The first resort of a potential 'whistleblower' must be to the employer and if a qualifying disclosure is made in good faith to an employer (or some other person in the belief that they are responsible for the matter) or to a third party in accordance with a procedure authorised by the employer, then it will be a 'protected disclosure'. If the employee reasonably believes that if he discloses internally he will be subject to a detriment, or that the evidence will be concealed or destroyed, or he has previously made a similar disclosure without action, or it is reasonable for him to do so, disclosure may be made externally.

Disclosure to regulator

Where disclosure is to be made to a regulator then not only must the matter comply with the above requirements but also the complainant must:

a) believe that the information is substantially correct;

b) believe the failure lies within the remit of the regulator; and

c) not be making the disclosure for personal gain.

Protection

Any clause in a contract which prohibits workers from exercising these rights is void, and any employee (there is no minimum service requirement) who suffers a detriment has a right of action. In the event of dismissal,

this will be regarded as automatically unfair by a tribunal. This would include an employee on a contract lasting less than a year who has waived their rights regarding unfair dismissal. If the detriment falls short of dismissal then any employee or worker will also be able to complain to a Tribunal. Unlimited compensation – the limit for unfair dismissal does not apply to whistleblowing – can be claimed.

Whistleblowing policy

It may be good practice for all employers to adopt a whistleblowing policy with an indication of to whom suspicions etc. should be reported.

Case study

Abbey National made a payment of £25,000 to a manager who voiced his concerns regarding collusion over payments made to suppliers. As a result the Bank's then Marketing Services Director was found guilty of, and jailed for, receiving bribes for authorising invoices in respect of goods which had not been delivered or had been delivered only in part, and seven other employees were also found guilty and jailed. In referring to the award, a Bank spokesperson said 'We hope this will set an example for all our employees and for other employers. Staff should feel able to speak out if they think something is wrong.'

At the time Abbey National did not have a whistleblowers policy (although all listed PLCs are now required to have such a policy) and the person who made the disclosures felt so isolated within the company that even though he was proved correct he felt he had to resign (although he later rejoined the company). Obviously, if the person disclosing wrongdoing is under pressure – whether deliberate or latent, not only are few likely to come forward, but also the purpose of the Act is lost.

Example of policy

1. [As stated in its general compliance policy] [the Organisation] operates within the country's laws and regulations and expects all employees to co-operate in this by adhering to all policies and procedures.
2. Every employee is expected to advise [specify a named person or position] should (s)he become aware of any matter or act which seems not to be in accord with the general aim set out in 1 above. Specifically all employees are expected to make such notification immediately they become aware:
   a) of the breaking or proposed breaking of any law or regulation by an employee of the Organisation;
   b) of an organisation procedure or policy being broken;
   c) of any wrongdoing;
   d) of any matter which seems likely to harm an employee, customer, member of the public, the environment etc.; or
   e) of any possibility or suggestion that one of the items set out in a) to d) has occurred and is being covered up.
3. Assuming these requirements have been met (i.e. the initial report is to [specify] rather than to an outside body), the [Organisation] undertakes to hold the employee harmless and to protect them from any personal claims and from any victimisation, harassment or bullying occasioned as a result of their acts. The aim is that the career of any notifying employee should not in anyway be harmed or hindered as a result of their act (whether the item reported proves to be true or not, provided the reporting was carried out in good faith).
4. The action of any employee against an employee who has made disclosure under this policy and as a result of such disclosure, whether they are affected by the disclosure or not, will be regarded as gross misconduct and subject to summary dismissal.

5. Anyone, including an elected safety representative who becomes aware of a hazard or dangerous occurrence is expressly required to notify [specify] before making any other report – e.g. to an outside body – not least so that immediate action can be taken if necessary to remove the hazard.

6. Failure to notify when reasonably aware or certain of an occurrence covered by 2 above is regarded by the Organisation as misconduct, since effectively it makes the employee an accessory. Failure to notify internally before notifying externally is usually regarded as misconduct. Only if an employee has reasonable grounds for believing that no notice will be taken of the report internally may contact be made to an outside body in the first instance.

Note: If the Organisation has a compliance officer, then it may be logical to insert the name of that person in such a clause. However, in safety reporting it may be important that a person is designated for this purpose on each site, so that urgent investigation and rectification can be implemented.

Prosecutions

In the three years since the Act came into force there have been around 1,200 cases, and around £10,000,000 has been paid in compensation. The average payment is around £100,000 and the highest amount awarded was £805,000.

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Working time regulations

Basis for inclusion

Legal obligations

Background

Regulations derived from the EU working time regulations require employers to provide paid statutory holiday (SH) for all employees and also control the maximum hours employees are able to work (and/or work without breaks) both overall and at night.

Paid holiday entitlement

All employees are entitled to 4 weeks SH within each holiday year. The allocation is reduced proportionately for those who do not work the whole year (e.g. start after its commencement and/or leave before its end). Those who work part-time are similarly entitled related to the hours they actually work (i.e. if they only work 2 hours a day then a 'day's' paid holiday is 2 hours).

Where an employer grants paid holiday on a contractual basis the first 20 days (which can include paid Bank Holidays) is counted as SH. (SH is not required to be an addition to the existing entitlement, provided the latter is of at least 4 weeks duration.) If employees leave before the completion of a holiday year then the entitlement needs to be apportioned and an amount paid in respect of the balance due (less any leave taken). This is the only time that a payment can be made in lieu of SH. SH can neither be carried forward to a following year nor drawn forward from a following year.

An employee seeking to take SH must give the employer notice which is twice the length of the leave (i.e. if 5 days leave is required, 10 days notice must be given) – although these minimum notice periods can be extended if an agreement is entered into.

Employers can agree with employees that should an employee take paid holiday in excess of their entitlement, they can be required to 'repay' the excess (either by cash or additional unpaid work). An employer can, with notice, require an employee to take SH at a set time.

Coverage

Whilst the rules are fairly straightforward, problems of entitlement have emerged. It seems it is not only employees who can claim paid holiday.

Case study

In *Byrne Brothers (Formwork) Ltd v Baird & ors,* Mr Baird and his colleagues each signed a subcontractors agreement to provide carpentry services to Byrne Bros. The contract stated that they were not entitled to holiday pay. However, when they were not paid for any holiday, they challenged this in a tribunal and at the EAT gained confirmation that they were entitled to be paid for holidays. The Working Time Regulations state that any person who works under a 'contract of employment' or any other contract whether 'express or implied' and whether 'oral or in writing' and provides personal services, is entitled to 4 weeks paid holiday per year provided they are not running a business.

Guidance re the use of 'rolled up rates' to pay for holiday is set out in HOLIDAYS.

Restrictions on working time

Although there are a number of types of work where derogations (exceptions) to the Regulations are allowed (e.g. doctors in training, who must be brought within the existing regulations by 2010), the armed forces, fishermen and those working at sea) generally these restrictions cover all types of work except:

- managing executives;
- those with autonomous decision-making powers where they can make their own decision regarding the number of hours worked (e.g. the self-employed), family employees; and
- those engaged on religious activities.

Those affected must not work more than 48 hours a week (a figure which is averaged over a 17 week period – although in consultation employer and employees may agree a different period).

The figure of 48 hours is a personal one and thus it is the number of hours worked by each person in each week which is being controlled. Employers might need to know whether their employees have other employment although if employees will not disclose this, there is little they can do about it.

However, employers and employees can agree to contract out of the regulations and if so, any such agreement must be:

a) individually agreed (i.e. opting out of the 48 hour rule is not subject to collective bargaining or agreement);

b) in writing;

c) subject to a 3 month notice period;

d) backed by records identifying each employee that agreed to opt out.(The employer needs to be able to provide information of the total number of hours (subject to a two-years maximum) worked by the employee.); and

e) made available for inspection by inspectors of the Health & Safety Executive or other body.

Although applicants for employment could be pressurised to sign an opt out, any pressure placed upon employees to sign is illegal (and of course, once an applicant joined the employer they could give 3 months notice to stop working in excess of 48 hours. Should sanctions be imposed on any employee refusing to sign (or wishing to stop working in excess), the employee has a right of access (irrespective of service) to tribunals. A dismissal in such circumstances will be automatically unfair.

In summer 1999 the UK Government relaxed two of the rules regarding the 48 hour week limitation:

- The requirement to keep records of the hours worked by those who have signed individual opt-outs is to be dropped.
- Those who work more than the 48 hour limit of their own volition and without payment can do so without signing an opt-out.

Other controls

Whilst the 48 hour limit applies to the overall number of hours to be worked in a week, there are a number of other limits which need to be observed:

a) Workers are entitled to 24 hours off in each 7 day period, or 48 hours off in a 14 day period.

b) Workers aged under 18 are entitled to 48 hours off in each 7 day period.

c) Workers are entitled to 11 hours consecutive rest in each 24 hour period .

d) Workers aged under 18 are entitled to 12 hours consecutive rest in each 24 hour period.

e) Night workers are limited to 8 hours work in any 24 hour period, and must be offered free health assessments both before commencing night work and regularly thereafter.

f) Where someone works more than 6 hours, at least a 20 minute rest break must be provided.

g) Those aged under 18 are entitled to a 30 minute rest break if they work more than 4.5 hours.

h) Where employees are engaged on monotonous work or their work-rate is pre-determined (e.g. their work pattern is machine driven and they have no control over the speed of the machine) they are entitled to 'adequate rest breaks' at more frequent intervals than the above.

In the event of an emergency or force majeure, then the above limits can be ignored – as indeed in practice most of them are.

Contracting out/amending the regulations

There are three types of agreement ('relevant agreements') to contract out and/or amend the above requirements – and all require consultation:

1. Individual Agreements. These are needed to opt out of the 48 hours limit and require individual consent. This type of agreement can also be used to add to the definition of working time and to agree variations to the holiday leave year and/or timing of holidays. Such agreements must be subject to 3 months notice of cessation.

EXAMPLE OF CONTRACTING OUT CLAUSE

I understand as a result of the Working Time Regulations that I have a legal right to refuse to work more than 48 hours a week (averaged over a [17] week period). Despite this, and entirely of my own choice, I hereby confirm that I wish to set aside this right with effect from [date] so that I can work in excess of this 48 hour average. This opt out will be effective for [period – maximum of 5 years] although I understand that I only need to give 3 months notice to terminate it. [I confirm that I have no other employment and will inform you if I do take on such other employment and the hours per week worked].

Signed _____[employee]

Witness _____[other than employer]

Continued over...

As your employer I acknowledge receipt of this notification confirming that you wish to opt out of the restrictions on working time imposed by the Working Time Regulations.

Signed _____[employer]

Date _____

2. Collective and Workplace Agreements. Either by consulting with elected Trade Union representatives (a collective agreement) or in consultation with workplace elected representatives (a workplace agreement) employees can vary some aspects of the regulations (see below). A workplace agreement must:

   a) be in writing and signed by elected representatives (or the majority of the workforce in which case it can last a maximum of 5 years); and

   b) specify the start date and the relevant members of the workforce covered.

The number of elected representatives can be determined by the employer who can also determine their term of office. Such representatives must be members of the workforce and all such members are entitled to vote. Elected representatives are protected from sanction in the same way as other elected representatives (e.g. Safety and Redundancy consultees). Elections must be fair and secret as far as is possible.

Both Collective and Workplace agreements can agree to:

a) add to working time definition;

b) use a longer than 17 week average in connection with calculation of working hours and length of the night shift;

c) modify the rules on the length of a night shift (if there are special hazards)

d) vary daily and weekly rest breaks; and

e) vary the leave year and timing of holidays.

Unsocial hours

The recent relaxation of the control of retail trading hours has led to a situation where it is possible for employees to be asked to work on Sunday as part of their normal 'week'. Under an agreement with the shopworkers union, USDAW, most major retailers agreed that such working should always be voluntary (which echoes legal requirements) and that should an employee wish to cease working voluntarily on Sundays they should give their employers 4 weeks notice. These rights and responsibilities should be included in employees' contracts. It was also agreed that premium rates would be paid for such work, although, in more recent agreements with major employers, the emphasis has been very much on paying normal rates for such work.

Since anyone forced to work on a Sunday against their will has a right of access to a tribunal (regardless of service), it is wise to arrange to obtain confirmation of a willingness to work on Sundays, and to request a written indication of a wish to cease such work.

To: _____[Employee]

I understand you wish to work on Sundays and to provide the appropriate documentation please complete and return the form set out below. If you wish to cease working on Sundays, you must give 4 weeks notice and we have prepared a further form to cover this eventuality.

Yours, etc.

To _____[Employer]

I confirm that I wish to work on Sundays and also confirm that should I wish to cease such work, I will give you at least 4 weeks notice of such a decision.

Signed _____

To _____[employer] _____Date

Please note that with effect from [date – at least four weeks ahead of date of this letter] I wish to cease making myself available for Sunday work.

Yours, etc.

The original authority should be kept for at least the duration of the Sunday work, and any indication of withdrawal for at least 3 years after the operative date in case of any dispute regarding the essentially voluntary nature of such work.

Note: In July 2004, the DTI invited comments on proposals to alter the Working Time directive. It stated that the Government were committed to retaining the opt-out and offered three choices:

- making sure workers have a real choice about the number of hours they work
- making sure workers are protected whilst working long hours
- making sure workers know their rights

Works Councils

Basis for inclusion

Existing legal obligation (for larger employers)
Pending for smaller employers

Background

Productivity and motivation is all about good COMMUNICATION and consultation. To foster at least formal communication the EU has required for some time larger employers to set up Works Councils (WC). This requirement is to be extended to all employers with more than 50 employees.

Legislation

For some years, employers with 1,000 employees and 150 in more than one EU member country have been required to have WCs with members elected by the workforce, and meeting three (or more) times a year. This requirement is now being extended to a far greater number of employers – depending on their headcount. Those employing 150 or more must provide a WC by 23rd March 2005, 100 by March 2007 and 50 by March 2008, provided 10% or more of their employees want this. Employees must be told they have the right to opt for a WC and if 10% or more opt for one the employer must set this up within 6 months. Failure to do so can attract a £75,000 fine.

The required subjects for discussion at WCs include:

a) Information about the business's economic situation. The recent and foreseeable development of the business and its financial situation – although a confidentiality need might preclude aspects of this.

b) Information and consultation about employment prospects.

c) Information and consultation about decisions likely to lead to substantial changes in work organisation, contract terms, redundancies etc.

Administration

As this book was being printed the consultation process to determine the detailed rules and requirements for setting up a Works Council was just commencing. The following suggested constitution should be viewed in that light. However Article 5 (2) of the EU's Works Council directive requires employers commencing the process of setting up a Works Council to effect this by consulting with a 'special negotiating body' (SNB) which must have a minimum of three employees (and a maximum of 17) elected or appointed for the purpose of determining the detailed working of a Council.

Policy/procedure

The following wording is part policy, part constitution, since in formulating the constitution the [Organisation] is determining the policy of what it will consider as well as how it is set up. It has been titled Joint Consultative Committee (JCC) since currently there are far more such committees in existence than WCs and it is a title that can embrace all organisations – including those that do not have 'works'. The principles for both organisations are virtually identical. It could be helpful to state, when setting up such a body, that personnel elected to the JCC will cover many of the other duties where the employer must consult with elected representatives.

Example of clause

Those employees elected to the [name WC/JCC] will by virtue of that election assume the obligations of elected representatives for the purposes of consultation, re:

- working time regulation requirements;
- safety matters;
- pensions; and
- redundancy and Transfer of Undertakings consultation.

This would mean that in 6 areas – the 5 above plus the Council or Committee itself – there would need be only one set of elected employees to consult.

Example of constitution

A. Purpose of a Joint Consultative Committee (JCC)

1. The object of this [Organisation] is to achieve our aims – by managing ourselves and our work, and with real communication we can attain these aim more effectively.
2. The object consultation is to provide an opportunity for management and employees to communicate and discuss matters of common interest – in other words to consult each other, and to consider each others requirements and interests – preferably before decisions are made.
3. The JCC will consist of an equal number of representatives elected by employees and appointed by management.
4. The JCC can discuss problems and suggest solutions. It can make recommendations or state preferences for or against certain decisions. It cannot make decisions – although this will not preclude a management representative at such a committee from making a decision regarding a matter under discussion, if such matter falls within his/her authority as a manager.

5. Elected representatives will be allowed such time as is reasonably necessary to carry out their duties. These duties will include canvassing their constituents for items for consideration at forthcoming JCC meetings, conducting such research as may be necessary to brief themselves on matters for discussion by the JCC, and reporting back to their constituents.

6. Any JCC member may request any item be considered at a JCC meeting other than matters relating to a particular person (which should be raised under the grievance procedure).

7. Full discussion will be allowed of each item raised at a JCC meeting and details of the item and the discussion and any recommendation made will be minuted.

8. The minutes of each JCC meeting will be posted on the Notice Boards and given to each JCC member and manager. Each elected JCC member will also receive a number of copies for use within his/her constituency. Decisions on matters raised for management consideration will be made as soon as possible and reported on at the following JCC meeting.

9. All elected JCC members should have a deputy or alternate who can attend meetings in his/her place.

B. CONSTITUTION

1. Purpose:

- To promote the fullest use of the accumulated knowledge, experience, skills and ideas of employees in the efficient running of the Organisation.
- To give employees a voice in decisions that affect them, and a chance to affect such decisions.
- To avoid conflict by giving management and employees the opportunity to listen to and reach an understanding of each other's views and objectives.

- To provide elected representatives with which the [Organisation] can consult in the event of redundancy transfers, safety considerations, working time requirements and pensions matters.

2. Organisation

- The committee consists of [number] employee representatives and [equal number] management representatives meeting [every other month] to consider an Agenda of items submitted by its members.
- The senior management representative will act as Chairman, whilst a Deputy Chairman will be selected from the elected representatives. The [Personnel Administrator] will act as the non-voting Secretary.
- The committee may consider all [Organisation-related] subjects (other than trade secrets, confidential information and an individual or his/her details). It is expected that the JCC will consider matters relating to:
  - the efficiency and productivity of the [Organisation];
  - the methods, conditions and procedures of work and of any changes;
  - personnel polices and procedures;
  - appraisal, training and education;
  - Organisation rules and policies;
  - health and safety matters; and
  - social and community related matters.
- An Agenda will be issued at least 5 working days before the meeting to all members, and minutes will be issued within 5 working days of the meeting to all members, the notice boards and all managers. Elected representatives will have additional copies for use in their constituencies.
- Elected representatives will be provided with administrative support and stationery, and will be allowed reasonable time away from their job to carry out their duties, which will include obtaining

input from their constituents regarding matters to be raised at a JCC meeting, research on matters on the Agenda, attending meetings and reporting back to their constituents.

C. RULES

- Consultation will take place by means of committee meetings which will be held [monthly, two monthly, quarterly etc.]
- The constituencies will be_____

Note: It is unlikely that a JCC representative could operate effectively with a constituency in excess of 60/75 employees. This pre-determines the number of representatives and, since the representatives should ideally be matched by the number of management nominees, the size of the committee. The workplace needs to be divided into constituencies roughly equal in size. To avoid waste of the representatives' time, the departments forming a constituency should be adjacent or work-linked. Very large departments might need to have two or more representatives.

- Any employee working within the constituency may be nominated for election as a representative. Nomination must be on a form to be provided and must be supported by the signatures of [5] other employees working within the constituency. Nominations must be handed to the [Secretary] at least 5 days in advance of the date set for the election, which will take place during [February] each year.

  The list of candidates seeking election in a constituency will be posted on all notice boards within the constituency at least two clear days before the election. If only one nomination is received the employee nominated will automatically be declared elected without an election.

If an election is necessary, all employees within the constituency will be given a voting form by the [specify], and those employees will be able to vote in accordance with the rules laid down at the time. The [Secretary] and two management representatives will be responsible for counting the votes cast.

In the event of a tie, the tied candidates will be required to toss a coin to decide who is to be the representative, and the losing candidate (or the candidate coming second where there is no tie) will automatically become the deputy, or alternate, for that constituency.

- Members will hold office for a maximum of [3] consecutive years. Having left the committee for a year, after completion of a [3] year term, an employee can rejoin the committee, if elected or appointed by management. At the end of each year, [2] management representatives and [2] elected representatives will retire.

  Those who retire in the first [2] years will be selected by ballot, thereafter whoever has served longest will retire. All persons retiring may seek re-election, provided this would not breach the [3] consecutive years service limit.

- Elected representatives will be expected to serve the interests of their constituents – keeping them informed and endeavouring to ensure their views are made known at JCC meetings.

- Amendment to the constitution may be effected by the Organisation, following consultation with the JCC.

The object of consultation is to provide an opportunity for management and employees to discuss matters of common interest – in other words to consult each other and listen to each other, and to consider each others requirements and interests – preferably before decisions are made. A JCC usually consists of an equal number of representatives elected by employees and appointed by management, who can discuss problems and suggest solutions. It can make recommendations or state preferences for or against certain decisions, but cannot make decisions.

Elected representatives should be allowed such paid time as is reasonably necessary to carry out their duties. These duties will include canvassing their constituents for items for consideration at forthcoming meetings, conducting such research as may be necessary to brief themselves on matters for discussion, and reporting back to their constituents.

Minutes of each meeting should be compiled and copies posted on the Notice Boards, as well as being given to each member and manager. Each elected member should also be given a number of copies for use within his/her constituency.

Decisions on matters raised for consideration by management should be made swiftly and reported on at the following meeting.

Elected members should have a deputy or alternate who can attend meetings in their place.

WARNING: The JCC should be seen to achieve something. If it gains a reputation (no matter how unfounded) for simply talking about items rather than really fostering genuine consultation, the result in morale terms may be worse than before it was set up. It will raise expectations – these` must be met.

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Xmas celebrations

Reason for inclusion

Commercial advisability
Potential legal liability

Introduction

Employers can be held liable for claims resulting from inappropriate activities of employees' (and their guests) at parties, dances etc. If the only reason for the participants (or most of them) gathering is their link as employees, then the occasion, regardless of location and who pays for it, may be held to be an 'extension of the workplace'. Accordingly, the employer could be held to be responsible for providing a 'safe place of work' there – and liable for any breach of that obligation.

Commentary

Without wishing to restrict enjoyment it may be advisable to issue a warning memo or notice well in advance of the proposed celebrations, with a reminder immediately adjacent to the timing.

Example of warning clause

1. The [Organisation] in sponsoring [event] hopes every employee [and guest] will find it enjoyable and that they will appreciate that the following guidance is meant to attain that aim. At all such events (whether we sponsor them or not, at which the attendance is related to the fact that those present or some of them are employees), its

employees and their guests are expected to act in accordance with this guidance.

2. At such an event the normal rules and guidelines regarding attitude and behaviour in the workplace apply – particularly rules regarding substance (including alcohol) abuse, harassment, discrimination etc.
3. Moderation and a consideration and respect for others is expected at all times. Breach of these guidelines cannot be tolerated and will render employees responsible subject to disciplinary action and others to claims made by the [Organisation].
4. All persons in a position of authority must remember such responsibilities.Whilst being relaxed and informal, they should not act in any way such that their position and/or respect will then or subsequently be undermined.
5. Drivers are reminded of the legal requirements regarding consumption of alcohol particularly if also taking medication.

Alcohol

The reminder about not driving whilst having consumed alcohol in excess of the legal limit is perhaps obvious. However, employers could be held liable if, for example, they provide a 'free bar' with no control placed over the number of drinks consumed.

Case study

A brewing company operated a residential training facility. After the day's training had finished the delegates could use the free bar on the premises. Some delegates drank too much and a fight developed during which a manager was attacked.

The company dismissed the three employees who had attacked the manager but they were able to claim successfully that this was an unfair dismissal. The point was made that if the company provides a free bar without control over consumption they can create a situation where excess consumption is almost inevitable – as will be the results.

Note: This is perhaps a classic case for an argument of contribution on the part of the employees – that is they must be held at least in part responsible for their actions. If contribution is accepted by the tribunal, the level of responsibility (0% to 100%) must be assessed by the tribunal. If it is decided there was100% contribution any compensation is reduced by 100% (that is it is completely wiped out).

Footnote: The Inland Revenue has increased the tax free limit that employers can spend on entertainment for their employees and guests. On a Christmas party or dinner etc., the new tax free limit is £150 per person (employee plus one guest). However, if the spend is £151 per person then tax is payable on the whole amount.

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Young workers

Basis for inclusion

Legal obligations

Background

There are a number of restrictions placed on the employment of young people – defined as those under normal school leaving age as well as those aged 17 and under 18.

Detail

Young workers (i.e. those between the minimum school leaving age and 18):

a) Are limited to working no more than 40 hours a week and 8 hours a day.

b) Can breach these time limits only if there is a requirement to maintain continuity of service, or to respond to an unexpected demand and there is no adult available.

c) Must not work between 10 p.m. and 6 a.m. or 11 p.m. and 7 a.m, subject to a number of exceptions. Thus they can work during those hours in hospital and similar establishments, in cultural, artistic, in sporting and advertising activities, in agriculture, retail trading, hotel and catering work (but not in restaurants and bars), in bakeries, and concerned with postal or newspaper deliveries.

d) They must be adequately supervised during any night work – they could work up to midnight and from 4 a.m., but not in restaurants and bars.

e) They must be allowed compensatory rest periods. They must be given a 30 minute break having worked 4.5 hours.

f) They are entitled to 48 hours off in each 7 day period and 12 hours off in each 24 hour period.

Young workers in the seafaring and sea fishing industries and the armed forces are excluded from these provisions.

Note: From October 2004 young workers aged 16 and 17 must be paid at least the minimum wage of £3 per hour.

Benefits

The question of the benefits – for example, holidays – to which a young person might be entitled needs to be assessed carefully.

Case study

In *Addison & Anor (T/a Brayton News) v Ashby* it was held that a 15 year old student who delivered papers for 6 days a week was not a 'worker' within the meaning of the Working Time Regulations, and thus was not entitled to statutory holiday pay.

Minimum working age (MWA)

Children under the MWA (13) must not work:

- for more than an hour before school or during school hours;
- before 7 a.m. or after 7 p.m.;
- for more than 4 hours without an hour's break;
- without an employment card issued by the local authority;
- within industry;
- where their presence is prohibited (e.g. in licensed premises); and
- where their health, education or well-being may be adversely affected.

Safety considerations

Under the Health and Safety (Young Persons) Regulations 1997 employers must, in respect of employees aged under 18:

- assess the risks to which young persons could be subjected and minimise these
- take into account the fact that young employees will be particularly inexperienced within the working environment
- consider whether any of the work (and the risks attached thereto) prohibit execution by young people
- inform parents and guardians or the risk assessment.

A guide to the requirements regarding young people is available from HSE Books, PO Box 1999, Sudbury, Suffolk CO10 6FS (Tel 01787 881165).

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Zeitgeist

Basis for inclusion

'The spirit of the times'

Background

In recent years the relationship between employer and employed has changed fundamentally and rapidly. Such change is here to stay. Zeitgeist (the 'spirit of the time') in terms of employment is encapsulated in the four or five keys words highlighted earlier. We have a required employer:employee relationship akin more to partnership than master:servant, and where the most productive and profitable partnerships are likely to be those where this requirement is positively embraced.

21st century partners

If partnership is to be effective it requires each 'side' to move away from confrontational attitudes and towards a realisation that mutual respect and trust may be the only way in which an improved and sustainable level of productivity and profitability can be achieved. This may be a challenge for some. A report of the Chartered Institute of Personnel & Development, 'Impact of People Management Practices on Business Performance', concludes, 'If managers wish to influence the performance of their companies, the most important area they should emphasise is the management of people. This is ironic given that our research has also demonstrated that emphasis on human resource management is one of the most neglected areas of managerial practice within organisations.'

Moving towards partnership is not simply 'a good idea' or the latest fad, it is based on economic reality. In its report 'Benchmarking the Partnership Company' (conducted by Birkbeck College and London School of Economics), the Involvement and Participation Association concluded, 'partnership pays off – organisations have a better psychological contract, there is greater trust between employees and employers and (my emphasis) PERFORMANCE IS HIGHER'. Partnership however, requires a change of attitude and poses challenges – for both parties.

Challenges for employers

1. To lead

The initiators of this new relationship must be management in which regard the report of the Hampel Committee on Corporate Governance provides guidance: 'Business prosperity cannot be commanded. People, teamwork, leadership, enterprise and skills are what really produce prosperity an effective board should lead and control the company.' The report does not use the word 'management' the operative word is the more positive and dynamic term 'leadership'. Managers who are real leaders are likely to motivate their teams, create real partnership and benefit from all that flows from it. As Roosevelt said 'the art of being a great leader is to get people to do what you want them to do because they want to do it'. Sadly in the UK the number of managers able to motivate their employees is relatively few – over 66% admitted in a recent survey by recruitment specialists Robert Half, that they possess only limited motivational skills.

Good motivational management LEADS. Research indicates that the majority of employees want good management/leadership and to be treated with fairness and respect. If partnership is required, leadership is essential.

2. To be flexible

The concept that employees' personal commitments were nothing to do with their employers is no longer a sustainable view. The best performers can select the best employers, and employers that wish to retain the best employees will be those that accept the need for balance and provide assistance for their employees in coping with their personal obligations – flexibility will increasingly become the norm – if only since it is what the vast majority of employees want. Flexible hours contracts, increased time-off whether paid or unpaid, homeworking, 'cafeteria' contracts (where the employee can select the range of benefits suitable to their situation at any time), creches for both children and elderly relatives being cared for, additional facilities for 'trailing spouses' (i.e. partners of those whose employers have required them to relocate – possibly overseas), will need to be provided by employers concerned to ensure that they attract and retain the best employees.

This is probably the greatest current challenge for employers but ironically, if the experience of those that have adopted the requirement positively is to be believed, could be a source of considerably increased productivity.

3. To foster mutual respect

Manager who are leaders must treat employees with respect and, above all, to listen to their views and their ideas. Thus, empowerment and brainstorming are also being used to allow employees to have a direct input into working activities. Innovative thought must be encouraged, indeed it is essential since, as management guru Peter Drucker said, 'the enterprise that does not innovate, inevitably ages and declines and in a period of rapid change such as the present, an entrepreneurial period, the decline will be fast'.

Man is a creature of habit – it is comfortable to deal with what is known, tested and habitual. But comfort does not protect let alone generate competitive edge. Creativity challenges all three habits – it forces us to think, to postulate and to theorise. Those that can do this and turn ideas into reality are successful leaders, able to motivate their teams to create the most successful organisations. In 1998, International Research Ltd conducted

a survey on employee attitudes. 87% of those interviewed rated being treated with fairness and respect top of a list of preferences. The ability to perform challenging work came next (80%) with 'freedom to get on with the job' (77%) in third position.

Challenges for employees

1. To be accountable

As partners, employees must be prepared not just to share in the benefits but also to accept the responsibilities. Whilst employees are unlikely to share in an organisations' losses, at least they must be prepared to be accountable for their own efforts – and failings. Increasingly, APPRAISAL schemes are being used to ensure that employees are made more accountable. Few schemes are as effective as they could be, mainly since it seems that few managers treat them as the spur to the future – identifying training needs and career progression. The ability to inspire people to give of their best will be essential in the fast changing economy of the 21st Century.

2. To take care and give excellence

There is a widespread attitude impression that 'second best will do'. Adoption of such a culture is an insidious drain on the search for excellence which should be the goal of all organisations that wish to survive. Whilst such attitudes manifest themselves at the sharp end with uncommitted employees, as the Chinese saying goes 'the body rots from the head'. If this is the sharp end attitude it can only reflect the attitude of senior management with an imperfect idea of what is actually taking place at the sharp end. 'The best manure is the farmer's boot' – and the best way of ensuring accountability, care and excellence is for managers to lead from the front – not from behind a desk, behind a secretary and behind a closed door.

The initiative

The message from the foregoing is clear. If the Organisation wishes to survive, traditional attitudes, procedures and habits need to change – and keep changing. This scenario may be difficult for some to embrace. As Gary Hamel (co-author of 'Competing for the future') stated recently, 'Where are you likely to find people with least diversity of experience, the largest investment in the past and the greatest reverence for industry dogma? – at the top'. Yet it is from people at the top – and only from them – that dynamic leadership must come. The skills, experience and expertise of employees are the greatest assets of most businesses – they are at least of equal value to capital and need to be treated as 'partners', and their commitment harnessed and maximised. Management can only achieve this by creating trust. Market researchers MORI recently discovered that whilst only 11% of employees trust their bosses, 75% believe in the core values of the employers – a solid foundation for a new commitment and partnership.

One word guidance

This book seeks to provide practical guidance to the requirements of employers in interfacing with their employees. Many of the requirements now encapsulated in laws would be rendered unnecessary if management had only embraced the following one word guidance.

Case study

In a case against a parcel delivery service, the employer decided to transfer one of its best employees to another area. He had worked hard on his area and as a result always earned the maximum bonus – about 40% of his total earnings. The 'walk' to which he was to be transferred was their most difficult area and it was impossible to earn any bonus.

He resigned and successfully brought a tribunal case for constructive unfair dismissal. During the hearing a tribunal member asked the manager who made the decision, 'If you had been told with only 48 hours notice you were to change work which would mean you would earn only 60% of what you had been used to earning, would you like it?'. Unsurprisingly the answer was 'no'. In which case, why should the employee like it?

If more of those sitting behind a desk and interfacing with their employee on the other side of the desk would only ask themselves 'If this was being done to me – rather than me doing it – would I like it or would I consider it fair?' If the answer is 'yes' – it is probably OK to proceed but if the answer is 'no' – it begs the question why are you doing it? The one work guidance – and the lesson for them – is

doasyouwouldbedoneby.

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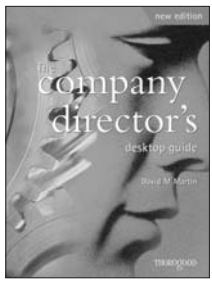

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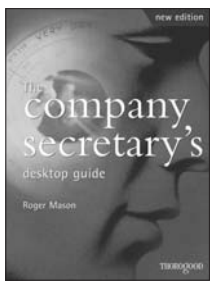

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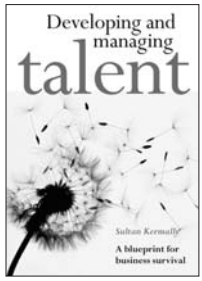

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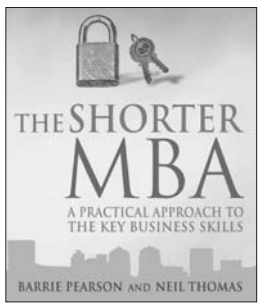

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