



Whitehead Vizard

Solicitors

EMPLOYMENT NEWSLETTER

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National Minimum Wage

You will recall that in our October Newsletter we informed you that the rates in respect of the National Minimum Wage would be increased from 01 October 2010. Employers should now be aware that the Low Pay Commission has compiled statistics, showing that a number of employers are failing to pay the correct rate. As a result and in order to prevent further non-compliance with the scheme rates, it is the government's intention to publish a list of employers who may be flouting the rules. Such list will be shown on the website for the Department for Business Innovation and Skills. Given that the internet is part of national media, there is a risk that such employers will be named in the local and national press.

Employers should also be aware that the adult rate band now starts at the age of 21 and not 22, as it was previously. Therefore, those employers with staff who have reached their 21st birthday must be careful to ensure that the employee is receiving the adult rate which, with effect from 01 October 2010, is £5.93 per hour.

Equality Act 2010

You will also recall that we advised you about the implementation of the Equality Act 2010. As the Act is still in its infancy the passage of time, in due course, will reveal the practical issues and any difficulties arising from its provisions. However, one of its provisions is already proving difficult and this relates to the issue of asking job applicants about their health.

When recruiting new staff, it is expected that an employer will wish to question a potential recruit about their health. Some sections of the media have inaccurately reported that the Equality Act 2010 places an outright ban on employers seeking health-related information. There are some restrictions as a result of the Act. These relate to the timing of when such questions are put to a potential employee. There is a risk whereby if an employer asks an applicant about their health before any offer of employment has been made and the recruit is not employed, there could be an assumption that it is due to discrimination. The burden of proving that this was not the case would rest on the employer, which it could prove to be a tricky point for employers recruiting new staff.

The exceptions contained within the Act do permit an employer to ask health-related questions. However, these are strictly confined to information that is necessary for any interview process. For example, if the employer was meeting with a disabled applicant, any related adjustments for the interview would need to be made prior to the interview. The issue of health in a more substantive form can usually be raised by the employer once a job offer has been made. As all employers will know, the vast majority of job offers are made on the condition that satisfactory references are provided. The offer can also be subject to the condition of certain health requirements.

Flexible Working

Many employers will know that currently the right to request flexible working extends to all employees with children aged under 17, or children with disabilities aged under 18, and carers who are responsible for a disabled dependant. You should be aware that the government has recently announced that with effect from April 2011, it will extend the right to request flexible working to all those employees who have children under the age of 18. At present this right only applies if the child is disabled. Employers are reminded that there exists the right on the part of the employee to request such a change, but not an automatic right for the employer to grant the request. Therefore, those employers who are unwilling to grant the request could consider certain statutory grounds in respect of their business to refuse the request. The correct procedure should, however, always be followed, which includes a proper consultation meeting with the requesting employee.

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