

New EU measures on the way

Employee input to management

A new level of involvement by employees in the strategies and decision making of their employer is less than two years away for larger employers. March 2005 will see the first stage of the *Directive on Informing and Consulting Employees* take effect.

Information and consultation with employee representatives will be required on:

- the recent and probable development of activities and economic situation of the employer's organisation
- the situation, structure and probable development of employment and any anticipatory measures envisaged – particularly where there is a threat to employment
- decisions likely to lead to substantial changes in work organisation or in contractual relations including collective redundancies and transfers

It can be seen that this goes beyond the information and consultation requirements already applicable to redundancies and transfers. It will involve employee representatives in other management issues too. On all relevant developments, employee representatives will have a right to:

- sufficiently detailed information and adequate time in which to study it
- discussion with the appropriate level of management, and responses from management with reasons for those responses.

Enforcement against employers who do not inform and consult will take the form of penalties. The TUC has suggested that injunctive relief should be provided so that non-compliant employers could be made to revert to the status quo ante.

As yet, we do not know how many small businesses will be exempt when the transitional period is completed by March 2008 – it could be 20 or 50 staff. However, we do know that in March 2005 the directive will apply to employers with more than 150 employees, and in March 2007 to employers with 100 or more staff.

Temporary agency workers

Another layer of non-discrimination rules will be added to employment law when the proposed *Directive on Temporary Work* is adopted by the EU and implemented in the member states. Employers will be required to treat temporary agency workers the same as permanent and fixed term workers.

However, some provisions in the proposal are being fiercely resisted by four member states (including the UK) and progress is now delayed until October 2003. Its key provisions include:

- The basic working and employment conditions applicable to temporary workers should be at least those which would apply to such workers if they were directly recruited to occupy the same job
- Clauses which prohibit temporary workers, after their posting, from concluding an employment contract with the organisation to which they were posted will be null and void
- Temporary workers will count as included in the threshold number of workers required for worker representation

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Health and safety

Workplace employees, home-workers and mothers

Health and safety legislation affects everyone at work – employers, employees, and the self-employed. Furthermore, directors and managers can be held personally responsible for failures to control health and safety. If you are found to be in breach of health and safety legislation you may also face a hefty fine. *The Health and Safety at Work Act 1974 (HSWA)*, places a duty on you to provide and maintain systems of work that are as far as is reasonably practicable, safe and without risks to health.

Inspectors from the Health and Safety Executive (HSE) administer health and safety law, together with local authorities and, for certain matters, the fire authorities. HSE Inspectors are entitled to visit workplaces to ensure employers and employees are adhering to the rules. They want to know how health and safety is managed and, if they find something wrong, they may help the employer to put it right.

However, if there are serious breaches, or a failure by the organisation to comply with improvement or prohibition notices, HSE Inspectors can enforce the law and that can result in a criminal conviction or even plant closure.

Does all this concern you?

Yes. The HSE states that accidents, ill health and incidents are seldom random events and that they generally arise from failures of control by management.¹ Some companies try to blame health and safety failures on the mistakes of front line workers. However, the HSE has also stated *'over the last 20 years we have learnt much about the origins of human failure. We can now challenge the commonly held belief that incidents and accidents are the result of a human error by a worker in the front line ... Organisations must recognise that they need to consider human factors as a distinct element which must be recognised, assessed and managed effectively in order to control risks'*.²

Must you do risk assessments?

All employers and self-employed people have to assess the risks from their work activities. If you employ five or more employees, you must record the significant findings of that risk assessment and you should also have a written health and safety policy. To comply with their statutory and common law obligations, you are required to train your employees in health and safety and, on some occasions, to consult your employees or their representatives on certain health and safety matters.

What applies to home-workers?

With the new right to request flexible working now in force, you may find that more of your employees work from home. Most of the regulations made under the HSWA apply to home-workers as well as to employees working at an employer's workplace.

The Management of Health and Safety at Work Regulations 1999 require you to undertake a written assessment of the work activities carried out by a home-worker. You are also responsible for the equipment they supply; this includes electrical equipment and its maintenance. However, other parts of the home-worker's domestic electrical system will not be your responsibility.

If you provide the home worker with equipment to carry out the work, particular risks to consider include ensuring that:

- the equipment is correct for the job that is being done
- proper information and training is given on how to use the equipment
- the equipment is checked regularly and kept in a condition that does not cause harm to the home-worker or others
- any necessary personal protective equipment is provided

¹ HSE Guidance - Successful Health and Safety Management [1997]

² HSE Guidance - Reducing Error, Influencing Behaviour [1999]

Health and safety continued

Are there special rules for new and expectant mothers?

With new maternity and paternity rights now a couple of months old, it is a good time for employers to focus on the special health and safety concerns that affect new and expectant mothers.

The health and safety of pregnant women can often be achieved by applying existing rules and procedures in the relevant areas. However, since pregnancy, childbirth and breastfeeding entail great physiological and psychological changes, conditions which may be considered acceptable in normal situations may no longer be so during these times.

The Management of Health and Safety at Work Regulations 1999 cover new and expectant mothers (that is a woman who is pregnant, who has given birth within the previous six months or who is breastfeeding). The sorts of hazards that you should consider are:

- physical aspects of the work
- biological and chemical agents
- work processes
- working conditions.

Many of these hazards are likely to have been covered by specific health and safety regulations.

You will need to keep these risk assessments for new or expectant mothers under review. When you have been told in writing that a worker is pregnant, has given birth within the previous six months or is breastfeeding, certain actions must be taken. As a general rule, you should first conduct a risk assessment. If this exposes any risks or hazards, you should then consider removing the hazard or to take steps to prevent the woman being exposed to it. Where this is not feasible, the risk of exposure should be controlled.

If, however there is still a significant risk to the safety or health of a new or expectant mother at her work (a risk which goes beyond the level to be expected outside the work place) then you must take the following further steps to remove her from the risk:

- temporarily adjust her working conditions and/or hours of work

If it is not reasonable to do this, or it would not avoid the risk then you must:

- offer her suitable alternative work if any is available

If that is not feasible then you must:

- suspend her from work (give her leave on full pay) for as long as is necessary to protect her safety or health or that of her child.

You will also need to give additional special consideration to new or expectant mothers who work at night.

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Our services to employers

RadcliffesLeBrasseur's employment lawyers can help employers in the following ways:

- *Drafting and advising on health and safety policies*
- *Bringing or defending health and safety claims at the Employment Tribunal*
- *Advising on health and safety representative obligations*
- *Advising on employer's health and safety duties for employees working from home*
- *Bring and defending stress at work claims*
- *Bringing and defending personal injury claims*
- *Advising on directors' and managers personal liability*



Meet the team

In our last three issues, Robert O'Donovan has enjoyed questioning his colleagues. This month it is Kerry Scott's turn to put the spot light on Robert.

K: *Was being a lawyer your first choice of career?*

R: No, I read economics at university and had plans to "run industry". I began by applying for jobs at merchant banks but was unimpressed. I was advised that one way to the top of industry was through being an in-house lawyer or company secretary, for which a legal qualification would be useful. So I turned to law and there I stuck.

K: *If you could invite to dinner any three people, dead or alive, who would they be and why?*

R: Well, I think I should focus on leading lights in the employment law field. First, I would invite Julie Bower who, last year, won approximately £1.5 million in compensation in a sex discrimination case. This illustrates the dangers in HR work and has the added advantage that perhaps she will feel able to pay the restaurant bill!

Secondly, Mr Barber whose case brought equality to the world of pensions. Sadly, and in the best legal tradition, his case took 10 years to work through the courts, during which time he died.

Third has to be Mr Litster whose case extended the application of TUPE – the Transfer of Undertakings Regulations. Never in the history of legal conflict has so little legislation produced so much litigation.

K: *What has been the most memorable moment of your career so far?*

R: Unfortunately, the most memorable moment was a disaster. On the basis of advice from a company accountant, I incorporated a formula in a legal contract which produced a price of zero for a highly valuable asset. Fortunately, the error was corrected but it taught me never to accept anything without checking that I understood it.

K: *If you were stranded on a desert island and you were allowed one book and one piece of music, what would they be?*

R: Sorry, but I'm going to be very practical. The book will be Robinson Crusoe, and the music will be 'We gotta get out of this place' by the Animals – to ensure I don't give up.

K: *If you could change one law today, what would it be and why?*

R: TUPE must rank as the worst piece of legislation ever. It's 22 years old, the subject of countless cases, and yet there are still uncertainties.

New promotion

Less than a year after her promotion to Associate Partner, we are delighted to announce that Sejal Raja has now been promoted again and is a full partner in RadcliffesLeBrasseur. Congratulations Sejal

Workshop news

Data Protection

Clearly a subject causing a great deal of concern. Numbers were too great for a single workshop so additional sessions are to be held on 23 June and 1 July 2003

Harassment and discrimination

18 September 2003 - invitations should be sent out in August.

Annual employment seminar

November 2003 – Date to be announced.

For more information on workshops, please contact:
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If you require any further information regarding the issues mentioned in this bulletin please contact Robert O'Donovan or Sejal Raja.

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