

E-bulletin Employment Law

April 2008



Corporate Manslaughter & Homicide Act 2007 – 6 April 2008

This Act which will have huge implications for companies with vehicle fleets and employees who use their cars on work-related business.

The Act creates a new criminal offence of corporate manslaughter (or 'corporate homicide' in Scotland). The new offence applies to organisations and not individuals; however, individuals will continue to be liable under existing manslaughter law and health and safety legislation.

An organisation will be guilty of the new offence if the way in which its activities are managed or organised:

- causes a person's death; and
- amounts to a gross breach of a relevant duty of care owed to that person.

An organisation cannot be convicted of the new offence unless the prosecution can prove that a substantial element of the breach lies in the way the organisation's senior management managed or organised its activities.

Sex Discrimination Act 1975 (Amendment Regulations) – 6 April 2008

In line with the Equal Treatment Directive and the High Court's ruling, the 2008 Regulations introduce:

A change to the definition of harassment so that it will no longer be necessary for harassment to be "on the grounds" of the victim's sex but only for it to be "related to sex" - and this need not be the victim's own sex. The effect of this change will be to significantly widen the protection afforded by the law.

An employer will now be liable for a third party's harassment of its staff where they have failed to take reasonable steps to prevent the harassment. The employer must be aware that the employee has been harassed on at least two other occasions before they will be liable.

It will no longer be necessary to have a comparator in cases concerning discrimination on the grounds of pregnancy or maternity leave. A woman wishing to bring such a claim need only show that she has been treated "less favourably" because of her pregnancy.

The SDA will now specify that a woman will be able to claim discrimination if she is not paid a discretionary bonus in respect of the two week period of compulsory maternity leave (CML). When calculating any discretionary bonus which falls due while a woman is on maternity leave the CML must be treated as if she was working normally. Failure to pay a contractual bonus for the CML will still fall to be dealt with under the Equal Pay Act 1970.

For women whose expected week of childbirth is on or after **5 October 2008** the distinction between terms and conditions which apply during ordinary maternity leave (OML) and additional maternity leave (AML) will be removed.

This means that women on AML will be entitled to the same non-pay contractual benefits such as holidays, gym membership, company car use etc. as those on OML and will be able to bring claims under the SDA if they do not receive them.

Employers will now have several months to check their contracts and policies to ensure that women on AML receive all the benefits due and to implement changes where necessary.

Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2007 – 6 April 2008

Charges for services

Agencies are permitted to provide and to be paid for ancillary services to work-seekers, from writing their CV's to providing accommodation. However, offers of work cannot be conditional upon the work-seeker using and paying for such services. To strengthen work-seekers rights, those who choose to accept the offer of services will be able to subsequently withdraw from them (on notice), without suffering any detriment for doing so.

Drivers supplied by agencies

A small minority of agency drivers are believed to be coerced into working excessive hours. To a large extent, this issue has been addressed by the revised European regulations on drivers' hours (which placed automatic liability on transport operators that fail to comply with the requirements). However, the Government will provide clearer guidance for driver agencies and the companies that use their services.

Short-term assignments

The information requirements of the existing regulations are to be relaxed for those working on assignments of fewer than five days provided the agency's terms are sufficiently clear.

Disclosure of information

Where an agency is unable to disclose references for work-seekers requiring professional qualifications or those working with vulnerable persons, it must currently inform the hirer of the steps it has taken to do so. In future, the agency will also need to explain the steps it has taken to obtain copies of any relevant qualifications and authorisations.

In addition, the existing regulations require an agency to inform the hirer in the event that information suggesting a work-seeker may be unsuitable comes to light. For the avoidance of doubt, this provision will now be stated to override any duties of confidentiality to the work-seeker.

Information and Consultation of Employees Regulations 2004 are extended – 6 April 2008

The Regulations, which implement the Information and Consultation Directive in Northern Ireland, are extended to cover undertakings with 50 or more employees.

With no consultation and information mechanism in place organisations that receive a request from 10% of the workforce (25% with 60 employees or less) are legally obliged to create a formal communication forum with management entering into negotiations with appointed employee representatives and developing a written constitution. This may be in the form of a union, works council, staff committee or staff association.

Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 are extended - 6 April 2008

The Regulations, which introduce a statutory requirement upon employers to consult with prospective and active members of pension schemes and their representatives before making major or significant changes to future pension arrangements, are extended to cover undertakings with 50 or more employees.

Rise in statutory payments – 7 April 2008

Statutory maternity, paternity and adoption pay will rise from £112.75 to £117.18 per week. Statutory sick pay will rise from £72.55 to £75.40 per week.

For more information:

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