

# CLIENT ALERT

## Hot Spots For UK Employers

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### Holiday Season

In the midst of a media frenzy because of the UK heatwave, there has been much discussion about workplace issues. A recent occupational health provider calculated that for every ten percent increase in temperature, there was a similar increase in employee absences. The summer season can be difficult for employers. To guide you through the minefield of the holiday season here are some key points to remember:

- All employees are entitled to 20 days paid holiday (there is a suggestion from the Government that this will increase to 20 days paid holiday plus an entitlement to 8 paid Bank Holidays - the DTI has recently begun consultation on this point). Many employees will be entitled to more than the statutory entitlement by virtue of their contract.
- The contract also governs how the holiday entitlement is dealt with. If it doesn't, the Working Time Regulations are the fall back position. The Regulations state that minimum leave entitlement cannot be carried over, nor can it be bought out other than on termination (however any entitlement under the contract beyond the minimum entitlement will be governed by the contract).
- The contract should also set out the amount of notice to be given to the person who should approve any application for holiday leave. If this is not set out in the contract, again the Working Time Regulations require that employees must give notice of dates of their proposed holiday at least twice as many days before the start of their leave as the number of days applied for.

As ever, it is important to deal with holiday requests and disputes fairly and ensure that employees are treated consistently across the board. Ensure that you keep a wary eye out for significant dates of religious importance, as refusing an employee a day off for a religious festival could be discrimination on the grounds of religion or belief.

The clear message is that there should be a detailed procedure set out within the contract, or alternatively within the handbook or company intranet.

### Fixed Term Contracts

The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 are of particular relevance to employers at the moment. The Regulations prevent employers from placing employees on successive fixed term contracts without objective justification. If an employee is on a fixed term contract and this contract has been renewed, or if the employee was previously employed on another fixed term contract then he or she will be regarded as a permanent employee as soon as he or she has been continuously employed for at least four years.

Service prior to 10 July 2002 does not count for these purposes, therefore the earliest date that a fixed term employee can achieve this permanent status was 10 July 2006. Employers should therefore be aware of this and identify any employees who have been continuously employed on fixed term contracts since July 2002. Employers must consider whether there is any good reason for the employee to remain on a fixed term contract and if not make sure that such an employee is treated as part of the permanent workforce to avoid any claims under the Regulations.

### **A Harassing Time For All**

Last week the House of Lord's handed down its Decision in a case dealing with vicarious liability. The House of Lord's upheld the Court of Appeals' Decision and found that an employers' vicarious liability arises under statute unless the statutory provision excludes such liability. Thus employees and ex-employees can now bring claims against employers for damages if they are subjected to a course of conduct amounting to harassment under the 'Protection from Harassment Act 1997'. This is good news for employees but makes grim reading for employers as damages awards are likely to be higher, there are more grounds upon which to establish harassment (other than the statutory grounds of sex, race, sexual orientation etc and therefore bullying is likely to be captured) and the limitation point is much longer than for Tribunal Claims.

### **An Employee Harassing a Former Employer?**

The [London] Times recently reported that a Marks & Spencers' shopworker was spared jail after an ill-conceived prank on his last day of work landed him in Court. The former employee decided to send a Mexican red-kneed Tarantula to his Line Manager on the day he left his job at Marks & Spencers. The shocked Manager called the RSPCA and the Police charged the former employee with 'conveying a threatening communication'. The employee was spared jail but ordered to perform 200 hours of Community Service and to pay his former Line Manager £200 compensation. He was told that he only avoided a custodial sentence because he had a number of good character references.

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