



EMPLOYMENT UPDATE

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SOLICITORS

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TUPE Service Provision Change

The Employment Appeal Tribunal has recently adjudicated over whether a contractor who took over the provision of services to asylum seekers but *in a new way and at a new site* was bound to employ the employees of the previous contractor under the Transfer of Undertakings Regulations (TUPE).

The EAT stated that a 'service provision change' under the TUPE regulations was broad in scope. However, Tribunals must adopt a "...commonsense and pragmatic approach..." to the particular facts of each case rather than take account of a set of prescriptive factors as in earlier tribunal decisions. In summary:-

"Where one contractor ceases and another commences service provision with differences in time, manner and/or place, there can still be [a service provision change] under TUPE.

Taxation of Benefits

The High Court has exceptionally held that the expenses of an employed consultant dermatologist in attending educational courses, conferences and meetings (including travel and accommodation costs) were tax deductible as, on the facts of the particular case, they were "...wholly, necessarily and exclusively..." incurred in the performance of her duties.

Loss of Arm Claim

An employee at a bakery in Valencia has put in a claim after his arm, which was severed in an accident with a kneading machine, was discarded by his employers in their hurry to clean up the kneading equipment and carry on with production. The arm was later found but it was too late to re-attach it.

Making Changes to Survive the Recession

Two thirds of employers are changing employee working patterns to safeguard jobs according to a study of 700 employers by the CBI and Harvey Nash recruitment consultants. Measures included cuts in overtime, lay-offs and short time working, flexible working and taking additional paid and unpaid holiday.

Certain voluntary arrangements proposed by employers have been of limited effectiveness. Employees of the Financial Times were recently invited to take time off work in addition to annual leave at 30% of their salary but it is reported that there has been a less than 10% uptake. Perhaps understandably, the offer from British Airways to their staff that they may want to work for a month for free was also

of limited effectiveness!

In a more innovative move, BT has looked to 'lend' employees to other organisations. Such employees are to be paid by the new employer for a minimum 1 month period but are able to retain membership of the BT pension scheme.

Employees are also taking measures to protect their long-term position. According to a survey carried out by the recruitment scoring website Hirescores.com 25% of British workers are so worried about job security that they are not taking their full holiday entitlement. When they do take their full holiday quota, more than a third check work e-mails or call the office whilst they are away.

Maintaining Data Protection Standards

The British Standards Institute has produced its first British Standard on personal information management aimed at assisting both public and private sector organisations with data protection compliance.

BS10012 is a non-prescriptive framework to assist businesses with training, risk assessment and the retention, disposal and disclosure of data and has been drafted by experts following public consultation.

Its launch coincided with that of the Personal Data Guardianship Code by the Information Security Awareness Forum and the British Computer Society which aims to promote best practice and provide further guidance on data protection and Freedom of Information issues.

Full Time Salary Payable Despite Mistake!

A Tribunal has held that Barclays Bank must continue to pay an employee a full time salary of £17,000 paid to a part time employee by mistake when her real salary should have been £9,500. The new pay rate should have said *pro rata*. However, the salary was clearly recorded in the employee's contract and she was unaware of the error.