

Rightfocus

Focussing on legal issues important to you

Whethering the weather

During the memorably cold first few weeks of January, the BBC website carried a story comparing the nation's reaction to adverse weather in 2010 with that of 1963, when the sub-zero temperatures that struck on Boxing Day 1962 lasted until the following March.

Comparing 1963's relatively small number of school closures with those of today (some 9,000 in England, 950 in Wales, 250 in Scotland and 16 in Northern Ireland) it highlighted how pupils tended to live closer to their schools in the 'olden days'. More tellingly, though, it quoted Peter Hennessy, professor of contemporary British history at Queen Mary University of London, as saying we have become "a health and safety nation".

Indeed, we have – certainly when compared with many eras from our past when danger and discomfort were accepted as a normal part of everyday life. The question today for many people, both at home and in the workplace, is how much reduced levels of risk justify the additional burden of legislation and other measures that we live with – from CCTV to bans on firework displays, from packets of peanuts that warn they 'may contain nuts' to horizontal 'topple-tested' gravestones.

While it's easy to mock some of the more extreme examples of this culture, there's no doubt that some aspects of it go right to the heart of some of the greatest challenges facing society. Scanners at airports, for example, that enables operators to see under one's clothing. Getting the right balance between what many see as a contravention of their right to privacy and others as a potentially vital tool in the fight against crime is a testing moral question that will never satisfy everybody.

However, steps that almost everybody now regard as eminently sensible – from the enforced wearing of safety belts to a ban on driving while intoxicated – also had their detractors when they were first proposed. Within a number of years, it is possible that the knowledge your body is being scanned will seem as natural as 'clunk, click every trip'.

In the meantime, though, there is little doubt that the cause of many sensible measures would be helped no end if they were not regarded in the same light as some of the more 'controversial' decisions made by councils and other organisations in recent years.

But most of us in the end would probably elect to put up with the decline of Bonfire Night celebrations as long as we did not have to share the roads with drunk drivers. Sometimes it's a balance worth having.

Welcome to the February 2010 issue of Rightfocus, Reynolds Parry Jones' newsletter.

Rightfocus aims to keep both our private and commercial clients up to with date with the most important legal developments affecting them.

This issue's articles include:

- Commercial property and the environment
- The possible cost of waiving your salary
- Are you ready for the fit note?
- Tax relief disappears on UK holiday properties
- It's a question of values
- Protection for cohabittees
- Cheer up – You might be richer than you thought!
- Holiday plans

If there are any topics you would like to see covered in future issues then do let us know.

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Commercial property and the environment

With more than half of the UK's carbon output coming from buildings, it is clear that the Government's ambitious CO2 reduction targets (reducing it by 80% between 1990 and 2050) will have a powerful effect on commercial property.

This will initially be driven by the so-called Carbon Reduction Commitment (CRC), which is set for a phased launch over five years, starting in April 2010. Managed by the Environment Agency to stimulate better energy efficiency among major electricity users in both the private and public sectors, the CRC will from 2011 require such organisations to buy 'carbon allowances' costing £12 for each ton of CO2 emissions they are responsible for.

Organisations will initially be allowed to buy as many allowances as they want but a cap will be applied after three years, which will lead to the creation of a market where allowances are traded.

It is expected that penalties for non-compliance among qualifying organisations will be severe. It is also anticipated that an equivalent scheme will be developed for smaller organisations.

If you have concerns about your business's ability to comply fully with current and forthcoming environmental or commercial property legislation, contact the appropriate expert at our solicitors' practice.



Are you ready for the fit note?

This April will see a highly significant change to the UK's sickness absence system, when the long-established sick note is replaced by the so-called 'fit note'.

This change comes in response to the very high cost of ill-health to the national economy, which is estimated to stand at £100 billion each year. Part of the problem in the past has been the 'absolute' nature of whether someone is deemed fit to work or not. This has meant that the sick note prevents people from working at all when, with the appropriate support of their employers, they may be fully capable of a wide range of productive tasks.

Developed after widespread public consultation and with the input of close to 600 GPs, the new fit note form enables doctors to give advice to employers on the straightforward changes to working conditions that may enable a person to return to work more rapidly. These may include reduced working hours, for example, or a modification to the work they are expected to do.

In this way, it is hoped that the cost of long-term absence to employers may be reduced, while helping employees to regain sooner the satisfaction of returning to work.

The possible cost of waiving your salary

During periods of economic uncertainty, such as those that many sectors are continuing to experience today, company directors can often decide to forego the payment of their salary to help ease the burden on the business's cashflow and other finances.

However, taking this route needs to be done with extreme care. Unless the correct procedures are followed, it is very possible that PAYE and National Insurance may continue to be due on the waived salary.

This is because under PAYE rules a salary can be considered to have been received for PAYE purposes even though it has not actually been paid.

Circumstances where this might happen include the comparatively simple situation in which a director is entitled to a salary payment but does not draw it. There are several other scenarios, most of which are very complex.

This has proven to be a problem for many companies – precisely at a time when making unscheduled and unnecessary payments is a particularly galling reality. Since HM Revenue and Customs are notoriously difficult to placate when faced with irregularities, it is invariably worthwhile to take professional advice when considering a waiver of salary.

When pensions become compulsory...

It might seem that 2012 is still a long way off, but there would be no harm in businesses starting to consider the forthcoming implications for them when certain key provisions of the Pensions Act 2008 come into force.

When this happens in two years' time, any business that employs people aged between 22 and 65 who are paid more than the current minimum of £5,035 per annum will be required to enrol them into, and make contributions to, a pension scheme. At the moment, it is planned that employers will be required to contribute a minimum of 3% and employees a minimum of 4% of salary, up to a combined total maximum of £3,600 per annum.

Due to the timescales involved, it is clear that there are likely to be many changes to the detail of the scheme before it is introduced. However, there will certainly be substantial penalties for those businesses that fail to comply, so it is certainly wise to consider now how you will get to grips with the demands of the scheme.

It may therefore be wise to discuss with one of our employment law specialists how the Pensions Act 2008 will affect the current reward packages awarded to your employees.

Tribunal rules against expenses-only employment

The days when employers could use young people seeking work experience as a source of very low or even no-cost labour may be over. This follows a recent ruling by the Employment Tribunals that such workers are entitled to payment that is at least in line with the national minimum wage, as well as accrued holiday pay.

The ruling, which may be particularly relevant for creative businesses such as production and theatre companies and publishing houses, came as the result of a case brought by former art department assistant Nicola Vetta against London Dreams Motion Pictures Ltd, following her work in 2008 on its production *Coulda Woulda Shoulda*.

Critically, the judgment means that workers cannot be denied their right to payment even if they respond to an advertisement that offers work on an expenses-only basis.

Commenting on the ruling, Martin Spence, Assistant General Secretary of the broadcasting, Entertainment, Cinematograph and Theatre Union (BECTU), said: "This decision will give enormous comfort to industry workers who face huge demands when they are starting out but who can often find themselves at risk of exploitation. We hope that this judgment will draw a line in the sand and that we will see more employers complying with the law."

Massive rise in people planning to work post-65

A recent report by the Chartered Institute of Personnel and Development (CIPD) found that there has been a significant surge in the proportion of people planning to work beyond the state retirement age of 65.

The Employee Outlook survey of 2,000 people found that 71% of respondents aged over 55 were intending to do so, in stark contrast with the 40% who said so in a similar survey undertaken in 2007. By way of contrast, however, the 2009 survey found that 70% of 18 – 24 year-olds do not believe they will be working past 65, even though they are in the age group least likely to have generous pension provision.

The main cause of the trend towards post-retirement working appears to be the recession, following falls in the value of savings, pensions and house prices.

According to Charles Cotton, Reward Adviser at the CIPD, the survey's findings have some significant implications for employers. "With more people working past 65, employers will have to accommodate older workers and motivate those who wish they could be elsewhere."





Reynolds Parry Jones

Reynolds Parry Jones is a long-established quality firm, founded in the nineteenth century. It is a general practice offering a full range of legal services to the whole community.

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Cheer up – you might be richer than you thought!

A senior economist has announced that many people are actually richer than they think – at least when compared with the population as a whole.

According to Alastair Muriel of the Institute for Fiscal Studies, many people have little understanding of income distribution, and many are much further up the scale than they think they are.

As he said, "The reason is that people tend to look at what they earn against the huge salaries and incomes quoted for bankers, footballers or rock stars, or because they compare themselves to what their boss is earning. They forget that included in the income distribution are the millions of people on benefits and many pensioners who are not well off."

For this reason, a recent graduate on a first-job salary of around £25,000 might be very surprised to know that they are actually in the top 20 per cent of income distribution. A childless couple each earning £25,000 is in the 87th quartile, meaning that just 13 per cent of the population earns more. And a mere 4 per cent earns more than a childless couple (or one with grown-up children) with a combined income of £80,000.

Holiday plans

It suddenly appears that new Bank Holidays are like buses – you wait for ages for one to come along, and then two arrive at once.

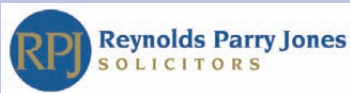


No sooner had we got used to the idea of a special holiday in June 2012 to celebrate the Queen's diamond jubilee than the Trades Union Congress (TUC) was backing a call for a new 'Community Day' to celebrate volunteering and encourage people to take part in community events.

An official campaign has been launched in support of the idea, which is being run by the National Council for Voluntary Organisations (NCVO), Community Service Volunteers (CSV), Volunteering England and the National Association for Voluntary and Community Action (NAVCA).

While no decision has been made at the time of writing, when a similar proposal was made in 2007 for a holiday to mark 'community heroes', the Confederation of British Industry (CBI) pointed out that every bank holiday costs the British economy close to £6 billion.

So, particularly as recovery kicks in over the years to come, it might prove difficult for any Government to justify more paid time off, especially so soon after the increase in statutory holiday entitlement from 20 to 28 days. Only time will tell.



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