

Welcome to the Summer 2008 issue of RightFocus, Reynolds Parry Jones' newsletter.

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

This issue's articles include:

- Are our private businesses working too hard?
- Ensuring acceptable internet use
- Tax relief on staff training
- The realities of renting
- Default retirement age set for retirement?
- Right to request training proved popular
- A 'reasonable' response to emergency
- Personal injury awards – why the gap?
- Avoid making an allegation public!

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

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Are our private businesses working too hard?

Employees in the UK work for longer every week than their counterparts in every other European Union country except for Bulgaria and Romania, both of which only joined the EU in 2007.

This is the key finding from a recent report by the European Foundation for Improvement of Living and Working Conditions, which shows that the average of 41.4 hours worked each week by fulltime employees in the UK is 84 minutes more than the average of all EU countries.

It also showed, however, that UK organisations are further from transgressing the legal maximum for working hours than employers in some other countries. This is simply because we, along with 17 other countries, operate a 48-hour weekly maximum, while the remaining nine members have a working week of no more than 40 hours.

Ironically, Bulgaria is one of these, meaning that its average of 41.7 hours places it in clear transgression of its mandatory maximum.

According to TUC General Secretary Brendan Barber, the number of hours worked by British employees is "no sign of economic strength, as we are stuck at the top of the league table with poor countries in Eastern Europe."

Analysis of the report suggests that it is workforces without union representation that push up the

average hours worked in the UK. This is because British unions have negotiated maximum working weeks that average just 37.3 hours (with particular success in the public sector), with only their French and Danish counterparts managing to negotiate shorter weeks.

It would seem therefore that it is people in smaller, privately-owned organisations who are working longer hours, potentially exposing directors to the risk of operating in breach of the European Working Time Directive (if their staff exceed a 48 hour working week).

Many observers argue that a shorter week can contribute to efficiency and productivity, leading to fresher, more motivated workers. Business Link, for example, cites improved quality, alongside reductions in waste, sickness absence and recruitment costs as key benefits, while recent research from Warwick University Medical School is showing that fewer hours worked by doctors is leading to fewer mistakes.

There is no doubt, however, that for many small businesses the prospect of reducing hours worked could be seen as a direct threat to profitability and, in some cases, their viability. Anyone concerned about the potential impact of working hours legislation on their business should seek guidance from an employment lawyer.



Ensuring acceptable internet use

Most businesses understand that they need to implement and enforce a number of policies to ensure they comply with the demands of the law. Policies governing employment, discrimination and data protection, for example, are regarded as vital in protecting the business from the risk of legal action.

So it is surprising that a report from Websense highlights that 23% of small businesses surveyed do not require their employees to sign up to an Internet use policy, while 16% have no policy in the first place. This means that virtually 40% trust their employees not to misuse Internet access. In a world where almost a third of workers admit to downloading music or video at work, this looks like a triumph for optimism.

Business Link recommends that every business should require its employees to sign up to an Internet 'Acceptable Use Policy' (AUP) that can then be monitored to ensure compliance. It should identify specific actions that break the rules of the business, including:

- visiting Internet sites that contain obscene, hateful, pornographic or other illegal material
- using the computer to perpetrate any form of fraud, or software, film or music piracy
- using the Internet to send offensive or harassing material to other users
- downloading commercial software or any copyrighted materials belonging to third parties, unless this download is covered or permitted under a commercial agreement or other such licence
- hacking into unauthorised areas
- creating or transmitting defamatory material
- undertaking deliberate activities that waste staff effort or networked resources
- introducing any form of computer virus into the corporate network

Simply having an enforceable AUP in place reduces the risk of legal action. If you require help in formulating one, speak to a qualified and experienced employment specialist.

Tax relief on staff training

It might be a surprise to learn that money spent on training does not automatically qualify for tax relief. It actually depends on two factors: who pays for it; and what it is designed to achieve.

If the employer pays for training, it will generally be eligible for relief – provided it is aimed at enabling employees to do their jobs better. This is even the case if the training covers generalist, 'soft' skills that do not rapidly deliver an identifiable advantage.

The situation is very different when the employee pays for his or her own training. Tax relief is not normally given, except when the training is required as an absolute necessity for the employee to carry out their own job. So it will not qualify, even if it solely is designed to help them do their job better, or if it enables them to carry out a new job.

In addition, when an employer reimburses an employee for training they have paid for, this will be seen as a benefit in kind that is taxable.

Any business with a training need that is likely to be costly, however it is paid for, should take professional advice on how best to approach it.

The realities of renting

As businesses seek to lower their costs during these tougher economic times, many companies that currently rent their premises may be considering moving to a less expensive property, reducing the space they occupy or negotiating a rent reduction.

Whilst achieving any of these aims can be difficult, you might be surprised to learn that negotiating a rent reduction could be the easiest – landlords are realists, and may well regard accepting a lower income from a known tenant as preferable to taking on the risk of an unknown quantity or leaving the property vacant.

The other options largely depend on the specific content of the original tenancy or lease agreement. Before making the decision to move, ensure that you are familiar with its details, paying close attention to notice terms, dilapidations and payments for utilities, rates and insurance. The timing of when you give notice can have a major impact on costs. If you plan to sublet or assign your lease to another business, make sure that you are not responsible for their debts if they default.

It is important to take professional advice from a commercial property lawyer before you make any final decisions. The costs of getting it wrong can be significantly greater than any savings you might stand to make.



Default retirement age set for retirement?

Despite September's decision by an Advocate general – a senior legal adviser to the European Court of Justice – that UK employers have a right to insist that employees retire at 65, the Employers Forum on Age (EFA) is still calling on the government to scrap the default retirement age (DRA) from 2011. If the government agrees, forced retirement will soon be consigned to history.

According to EFA Director Catherine Pusey, the change would mean that employers would no longer be able to insist that their employees retire at 65 without the prospect of facing tribunal claims.

As she says, "It's not just attitudes to working beyond 65 that need to change – the fiscal reality is that the UK economy can no longer afford a culture of early retirement, as many individuals will have a third of their lives ahead of them as they receive their first pension cheque."

Her argument is not a purely financial one, however. One of the EFA's responsibilities is to help employers gain from harnessing the experience of older workers. "As working lives get longer, an important part of the work we are doing is to ensure that our members understand age legislation in all its intricacies and benefit from having an age-diverse workforce," she adds.

Any business wishing to know more about the current rights of older people in the workforce should talk to an employment lawyer.

Right to request training proved popular

A recent YouGov survey for the TUC and its skills development organisation unionlearn, shows that 70% of working people would like to have a legal right to request paid time away from work for training. Over half the respondents (53%) additionally said that they would use such a right.

Currently, one employer in three provides no training at all for its employees, representing some 8 million workers. This is despite regular complaints by business leaders about the lack of skills among the population. In order to address this issue, early this summer the government announced that it would introduce a new right to ask for training at work, similar to the new right to request flexible working.

Encouragingly for the future of UK skills and international competitiveness, it was younger people (aged 18 to 25) who were most keen on the idea, with 80% agreeing with the proposal.

Any businesses that do not offer training at the moment may need to address the situation – the new entitlement, which could be brought in as early as 2010 if the legislation passes successfully through Parliament, would apply to all employees with 26 weeks' minimum service. At today's figures, this means some 22 million employees.

A 'reasonable' response to emergency

Every employee is entitled to a 'reasonable' amount of unpaid leave to cope with a crisis involving a dependant (whether child, parent, partner or other household member). This is enshrined in law under Section 57A of the Employment Rights Act 1996 – but this includes no definition of what is meant by 'reasonable'.

However, employees must be made aware that Section 57A is designed for emergency situations only, providing a short breathing space at a particularly difficult time – it is not designed to provide people with an alternative to longer term childcare arrangements.

In its guidance section, the Department of Business, Enterprise and Regulatory Reform (BERR) suggests that in most cases 'one or two' days should be enough.

Again, this is not a precise measure and common sense will usually determine the right length of leave, according to the individual circumstances of each crisis.

Employers should first simply ensure that an employee requesting such time off explains the reasons for the absence and its likely duration, and then should pay close attention to the actual length of leave taken. If it is felt that this is excessive, before taking any action the employer should first encourage the employee to find an alternative means of care to enable their return to work.

Professional advice can be invaluable when working with contracts or other documents related to employment law.



Reynolds Parry Jones

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Personal injury awards – why the gap?

Have you ever wondered why there is such wide disparity between the personal injury awards made to different claimants? During the summer, several observers commented on the £4.5 million award made to promising footballer Ben Collet, whose career was cut short by a badly broken leg.



In the meantime, people who have been victims of crime, including violence, regularly receive far smaller pay-outs – particularly when the perpetrator is unknown.

The primary reason for this disparity was that Ben's was a 'fault' case, where another footballer and his club (Middlesbrough FC) were known to be responsible for the injury. This meant the case could be heard in court, taking into account factors such as the loss of past and future earnings – and as one of England's most promising stars at the time, Ben was clearly set for a very high income.

If a perpetrator is not caught, however, a case is regarded as 'no-fault'. This means that reparation is paid by the state, with a fixed set of guidelines in place to determine how much should be paid. In a case of violent crime, awards are made by the Criminal Injuries Compensation Authority (CICA), whose guidance, for example, proposes £1,000 as appropriate compensation for a victim who suffers an undisplaced fractured nose.

While this might not be immediately seen as a fair solution, there are many countries where no compensation at all is available in no-fault cases. With the support of a good personal injury solicitor, every UK citizen has the opportunity to win a financial award appropriate to their loss.

Avoid making an allegation public!

Be very careful if you make an accusation against someone by email – particularly if you copy it into people other than the person you're accusing.

A recent case highlights this need for care. Before Salford University lecturer Dr Tom McMaster attended a conference in Ireland, he first gained the permission of his employer to travel there by boat. When he submitted a £180 expenses claim for the costs of the trip, however, it was rejected.

When he questioned the decision, he received an email from the university's then finance director, which alleged that the claim was fraudulent. Critically, this mail was copied into four of Dr McMaster's colleagues.

Dr McMaster instructed lawyers to demand an apology, only to receive a repeat of the allegations. He then took the university to the High Court to clear his name and seek damages, receiving £10,000 in libel damages. The cost to the university of defending the action is unknown.

In sharing his allegations with the people on the original email's circulation list, the finance director was effectively libelling Dr McMaster – a step that resulted in significant costs being awarded against his employer.

So anyone who doubts the probity of another person would be well advised to ensure that all communications remain on a one-to-one level!

