

Rightfocus

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Focussing on legal issues important to you

Here comes the Equality Act 2010

The majority of the Equality Act 2010 is set to become law this October, following some earlier confusion over the implementation time-table resulting from May's change of government.

The aims of the new act, following some 40 years of legislation designed to make Britain a more equal society, are to update, simplify and strengthen the previous regime, so protecting individuals' rights more effectively and enabling equality of opportunity for all.

While at the time of writing there were still some small areas of uncertainty as to precisely what will come into force this year, it is clear that changes to the regime will make it easier for employers and businesses to comply with equality legislation.

The main areas addressed by the act, known as 'protected characteristics' are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief (including lack of belief)
- Sex and sexual orientation.

These are all familiar areas, as they have been covered by legislation for many years. Similarly, those acts that are expressly unlawful under the new act are already unlawful under the established regime: direct and indirect discrimination, harassment and victimisation relating to any of the protected characteristics.

It also seems likely that the provisions due for implementation at a later date will include the new concept of dual discrimination, extended Equality Duty for

the public sector and a specific prohibition on age discrimination within the services and public functions.

One important feature of the act is expected to be greater transparency on pay in a bid to prevent gender pay imbalances. It will do this by making any 'secrecy' clauses in employee contracts unenforceable in certain situations. From 2013, assuming sufficient progress has been made, it will also require organisations with 250 or more employees to publish information that reveals whether or not there is a gender pay gap.

This move towards greater pay transparency is of concern to some employers who are worried that it might lead to unrest in the workplace – and even an increase in equal pay litigation – as workers find out what their peers are being paid.

Another area set for change involves an extension to the power of tribunals in making 'recommendations' (which are in reality directions or instructions). Now, instead of applying only to the particular person who made a claim, they can potentially be applied to the entire workforce of that claimant's employer. This even applies if the claimant does not return to employment.

Anyone who is concerned about these possibilities, or any other aspects of the Equality Act 2010, should seek the advice of a specialist employment law solicitor who will be fully au fait with the implications of the new legislation.

Welcome to the June 2010 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:

- Here comes the Equality Act 2010
- Fake fit notes – don't be fooled!
- The key to good workplace relations
- Getting business start-up advice
- The importance of anti-bribery procedures
- The dangers of illegal employment contract
- Red tape reductions on the way
- Equifax calls for fairer credit scoring
- The cost of humiliation?

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

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Fake fit notes – don't be fooled!

Employers have been warned to keep an eye out for fake fit notes, which are easily available online to unscrupulous employees for under £10.

The website – whose address we will not publicise – claims that it provides the “Guaranteed 48 hour delivery of authentic looking replica doctors (sic) sick note or medical certificate. Written on official doctors (sic) notepaper, with real stamp”. It also sells other fake medical documents, including notes from dentists and private medical practices. The site warns that the fakes are for “novelty use” and should not be used in a bid to claim sick pay.

According to Ben Wilmott, Employee Relations Adviser at the Chartered Institute of Personnel and Development (CIPD), it could however be “very difficult for employers to spot them”. He added that in the event of suspicion it would be sensible to check the note's authenticity with the surgery that supposedly issued it.

Use of a fake note to avoid certain tasks or take illegitimate time off is fraudulent behaviour, and employers should warn that disciplinary action may be taken if an employee is found to be using one.

Should an employer wish to take legal action in such circumstances, they would be well advised first to take the advice of a solicitor experienced in employment law.

The key to good workplace relations

With public sector spending cuts significantly raising the risk of strikes in several key service areas, many private employers are also considering the best ways to prevent their own employees from taking action in the face of possible job losses and pay freezes.

The best available advice involves creating strong, open relationships with employees and any unions that may represent them. Always be willing to discuss any issues they may have, and pay close attention to what they have to say. Be responsive to particular issues, and be prepared to make certain small concessions while defending your position on the business-critical ones.

Be sure to understand and clearly state management's position with a willingness to discuss it in detail. Constantly keep the lines of communication open, and be sure that you can honour any promises made in good faith.

Without making threats, also be sure to point out the downside of taking strike action, including damaged future relationships and the potential for serious effects on the business that may have to result in job losses.

If you feel that you need expert help in repairing employee relations or that a strike appears to be inevitable, take advice on your legal position from an experienced employment lawyer.



Getting business start-up advice

Many people starting their own business for the first time find it hard to know whether or not they should speak to a lawyer.

The reality is that you do. For example, if you choose to set up as a partnership, you need to draw up a Deed of Partnership with a solicitor to set out its terms and conditions.

There is no such requirement for a limited company. This does involve creating a new legal entity, however, which can be complex. Company documents, such as the Memorandum of Association (describing the company's purpose and activities) and the Articles of Association (detailing the rights of shareholders, powers of directors and how the company will be run) also need to be created, making legal advice a wise option for many.

Even setting up as a sole trader, the simplest task of all, can expose you to complications. Do you require a trading licence? Does your business comply with local authority regulations? Are your premises (including your home) suitable for your business?

Consulting a solicitor under such circumstances need not be expensive and can save you much in terms of stress and cost at a later date.



The importance of anti-bribery procedures

The new Bribery Act, which comes into force this October, defines four new criminal offences.

Three affect individuals:

- offering or paying a bribe
- requesting or receiving a bribe
- bribing a foreign public officer.

The fourth is a corporate offence – failing to prevent bribery from being undertaken on an organisation's behalf. It is, however, an admissible defence when an organisation has adequate anti-bribery procedures in place.

The new Act's purpose is to replace out-dated and fragmented legislation with a comprehensive scheme that enables prosecutors and courts to deal effectively with bribery, both in the UK and abroad.

Practically, it means that all organisations will be required to prohibit bribery in any form, whether direct or indirect, and to commit to creating and running anti-bribery systems. Larger organisations will additionally need to meet a range of other commitments, including the introduction of a statement of values, a code of conduct, training, whistle-blowing procedures and much more.

Any business of whatever size that needs support in interpreting and implementing what needs to be done to comply should in the first instance talk to their solicitor.

The dangers of the illegal employment contract

There can be severe consequences for employers and employees alike who have an illegal contract of employment.

This is a particular risk when employing workers from other countries. There is a high proportion of overseas illegal workers in Britain, and employers using ignorance of their status will find little tolerance in the courts. Those negligently employing illegal workers might face fines of around £10,000 per worker, while those doing so knowingly face unlimited fines or a prison sentence. They are therefore well advised to closely examine the visa stamps, work permits and passports of new non-British employees.

Other forms of illegal contract of employment are those that seek to enable the non-payment of tax or National Insurance or that include illegal or immoral acts as part of the job.

More common are contracts that, while not illegal, are not enforceable because they do not contain reference to the employee's statutory rights, such as working conditions, maternity leave, sick pay, redundancy and more.

An employer wishing to ensure that their employment contracts are legal and complete should consult an employment specialist.

Red tape reductions on the way

The announcement by Business Secretary Vince Cable of a new forum called the 'Reducing Regulation Committee' was the first step in the government's drive to control the burden of red tape on businesses.

In addition, he announced a review of all new pending regulation and pledged only to introduce new rules when existing ones could be abolished.

As he said at the time: "We need to reduce regulation and at the same time meet our social and environmental ambitions. This demands a radical change in culture away from the tick-box approach to regulation only as a last resort."

Commenting on the announcement, the Chief Executive of the Forum of Private Business, Phil Orford, said: "We look forward to an enterprise culture that is conducive to small business growth rather than restrictive, as we have at present with the record levels of red tape that exist."

There is a risk that reduced regulation, while cutting the time and expense of compliance for businesses, might in the medium term leave them uncertain of their responsibilities. Your solicitor will always be fully conversant with changes as they take place, giving you an easy-to-access and cost-effective source of guidance whenever you are unsure of the current position.

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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Equifax calls for fairer credit scoring

There are worries that, even after recovery, the impact of the recession on people's financial histories might continue to negatively affect their credit rating for some years.

This has led to a call from online credit information provider Equifax for lenders to consider new sources of data becoming an acceptable part of the credit-scoring process.

According to the company's external affairs director Neil Monroe: "If credit files only continue to include the payment performance data currently held, many individuals who have experienced a small discrepancy in an otherwise good credit record stand more of a chance of being declined."

The company believes that fairer credit checks, giving a more realistic picture of the ability of the applicant to repay, would include information on utility and rent payments and income data. An Equifax survey among its private customers showed that 63% of respondents would be happy to have other forms of data included on their credit file.

According to Neil: "The challenge facing lenders now is how to make the best assessment of someone's affordability for new credit without them risking either over-borrowing or not being able to get the credit they can afford."

The cost of humiliation?

Two recent high-profile cases have highlighted the potential carried by exposure to public humiliation as a realistic (and sensible?) basis for legal action.

First, there is the case of the Britain's Got Talent contestant who has accused the programme and its judges of "exploitation, humiliation, degradation and barbarism".

She was 'buzzed' by two of the judges before even finishing the first line of the power ballad You Raise Me Up, made famous by artists including Westlife, Daniel O'Donnell, Michael Ball, Aled Jones and Russell Watson. Representing herself, she launched an action seeking £300,000 for injured feelings, compensation of £1 million and loss of earnings of £1.25 million.

Next, the man who was frog-marched by his boss to a police station with a sign around his neck reading "THIEF - I stole £845..." is seeking some £90,000 in compensation for the humiliation he suffered. He claims this left him traumatised and unable to work.

Speaking after receiving a civil claim form, the man's former boss said: "I don't think it's right that you steal from someone and then sue them - that is not justice."

Whatever the rights and wrongs of either case, though, it seems strange that someone claiming to have suffered humiliation should then elect to highlight it again in such a public manner.