

Pay and Employment Rights Service Newsletter

April 2010

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Free employment rights advice for West Yorkshire VCS organisations and employees

Are you “Under Pressure”?

Unite, the UK's largest trade union with over 2m members, recently announced that more than 90% of voluntary staff felt the current financial crisis facing charities is having an adverse effect on their welfare, and on service users. The crisis was because of short term contracts with an emphasis on cost cutting, and “welfare” included “physical and mental health, dignity at work, health and safety and development in the workplace”.

On 9th and 17th March, Unite members lobbied parliaments in London and Edinburgh respectively, calling for a fairer funding mechanism for voluntary sector organisations that deliver key public services. What changes would you like to see in the sector?

Did you read the survey “Unsustainable – the impact of funding on the Not for Profit Workforce”? It's available on the Unite web site: <http://www.unitetheunion.com> and also revealed workers were:

- working long hours to achieve contracts' outputs
- this pressure was leading to stress
- there is constant job insecurity as funding is short term
- this results in few training and development opportunities

Does this apply to you or your organisation?

NI and pension expenses – which way to jump?

We all know UK is facing cuts in public spending, it's just a question of by how much and when. You may have read that there are plans to increase National Insurance (NI) contributions by 1% from April 2011. But did you know employers will have to enrol employees in a Qualifying Workplace Pension Scheme (QWPS) and contribute to it? This is being phased in from Oct 2012, starting with larger employers (more than 120,000 employees) and a 1% contribution. So, do we amend our funding bids now? Or wait and see what becomes law and risk a budget deficit? How will you tackle this?

Use it, Lose it, Reclaim it ? More holiday news

A recent tribunal ruled that employees who do not request their annual leave in line with their organisation's advance notification procedures will lose their entitlement to take that leave (unless, of course, their contract allows them to carry some of that leave over). So, if

your organisation demands 4 week's notice to take holidays, do not leave your request to two weeks before the end of the holiday year.

However in another recent case, the court of justice declared that this is not the situation if the employee is

ill. This one went all the way to Europe and the ECJ ruled statutory holiday can be postponed if an employee is sick during a period when they should have been on holiday. It further stated that if necessary that holiday can be carried over to the next holiday year. For more details on this complicated area of law, call PERS on 01924 428030.

HR in the media - The Day the Immigrants left.

Did you watch this thought provoking documentary on BBC 1 in February? It explored the commonly aired complaint that immigrant workers are taking UK workers jobs. The resounding conclusion of the programme was **NO**, immigrants aren't taking jobs from UK workers.

Four employers in diverse fields (potato factory, builder, Indian restaurant and asparagus farmer) offered to take on 12 workers for a trial. It started badly as four of the twelve did not turn up, despite many saying they were desperate for work or there were no jobs as the immigrants took them all. A further 2 were late and surly.

The young man left on his own in the Indian restaurant found the work too demanding and left mid way through the day. One of the field hands really tried but just could not keep up with the immigrant workforce – both could have been a case for more training, but what about their 4 colleagues?

The factory workers constantly complained about the speed of the line, made serious mistakes and blamed others. However, the builder fared better and kept on two employees after the trial.

This is not a reflection on all UK workers, but proves immigrants are providing a much needed service. However, the Office for National Statistics says the number of immigrants coming from central and Eastern Europe continues to fall (down from 166,000 to 113,000 in the year to June 2009) compared to the year before. Are immigrant workers unfairly scapegoated? What is your opinion?

Increase in Statutory Benefits from April

The standard rates for maternity, paternity and adoption pay (SMP, SPP and SAP) will increase to £124.88 a week from £123.06. The standard rate of Statutory sick pay (SSP) will remain unchanged at £79.15 a week.)

Training Programme

- 20th Apr** **Equality and Diversity, Wakefield**
- 27th Apr** **Statutory and Contractual Rights, Leeds**
- 11th May** **Absence and Performance Management, Leeds**
- 16th Jun** **New Employer – the first 6 months, Bradford**
- 22nd Jun** **Data Protection, Wakefield**

Editor's Column

In the last edition we had a poll about dress code following an appeal tribunal's decision that long hair in a man does not look smart in a "traditional sense". The results were split 50/50. Half disagreed with the ruling, one lady stating "It's about taking care of your appearance and keeping tidy – not what length your hair is!" The other half chose "depends on the profession."

This edition's poll is on sharing parental responsibilities. Would you share maternity leave with your partner?

- A** Yes
- B** No
- C** Not practical (financial or other reasons)

Let me know what you think, anne@pers.org.uk

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is waiting
to hear from you
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*The best way to keep up
to date with changing
Employment Legislation is
through PERS training
courses.*

*We also run shorter
evening sessions:*

**The Fit Note and
Legal Update 2010**

On

Wed 26th May

at

*Quaker Meeting House
WF1*

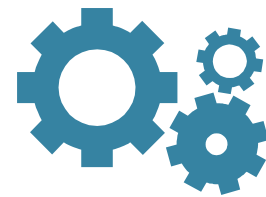
betw 18.00 – 19.30 hrs

In the News: Contracts

Staff can be self employed, agency workers or employees and often the difference between them (employment status) can be grey. It is not just about who pays the tax and National Insurance contributions but status is determined by:

- a) control – an employee is told what to do, when and how to do it. A self employed person decides this for themselves.
- b) mutuality of obligation – an employee is obliged to turn up for work on fixed days and the employer to compensate or pay them for this work. A self employed person works when he/she wants, sets his/her own rates and can send someone else to do the work.
- c) what the written contract says – rate of and arrangements for pay, sickness/ holiday entitlements and rules, hours of work, pension provisions, breaks, NI & tax, grievance or complaint procedures.
- d) what actually happens – the reality of the relationship
- e) a range of other factors such as: who provides the materials and equipment, liability for business debts and correcting any faults.

*Confirm you are receiving your statutory rights by phoning PERS on:-
01924 428030
or checking the web site:-
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Recent Cases

In some cases a working relationship can be a mixture of the above and it is up to an employment tribunal to decide status. Recently an appeal tribunal noted car valeters contracts stated each worker was an "independent contractor" who could use others to carry out the work. However, the EAT looked at what actually happened; the reality was that the individuals turned up each day for work and personally performed that work. Hence it decided they were employees.

Workers

All employees are workers by definition of the Employment Rights Act but all workers are not employees. Workers either work under a contract of employment or they "personally perform any work or services for another party" e.g. they can be agency workers. Workers are entitled to some rights (such as minimum wage, statutory holidays and freedom from unlawful discrimination) but not as many as employees. See our "Categories of Workers and Types of Contract" fact sheet on our web site for full details. A written contract is vital here as it can help a tribunal to determine employment status and is hence a very useful tool in disputes.

Volunteers

Are different yet again. They are not paid but receive out of pocket expenses. It is important that they receive a written volunteer agreement, even though a recent appeal tribunal described this as being "binding in honour only". This note must not imply mutuality of obligation, otherwise it may be construed as an employee contract. We suggest you contact a volunteer organisation to check the legal position of any agreement you draft.

Written Contract

An employee does not need a written contract to prove employment status, however, a recent case highlighted the importance of having one. Here an employee was entitled to 30 days holiday each year but rarely took them. When she left the organisation she claimed untaken holidays for her entire service - 7½ years. Without a contract stating holiday could not be carried over, an EAT ruled the Company owed her the money – a total of 131 day's pay.

New Legislation - what's coming and how it affects you

Employment law is updated twice each year, on 1st April and 1st October and 2010 is no different from any other year. Here we look at the legislation coming into effect from this month.

Right to request time off to train

The Apprenticeships, Skills, Children and Learning Act empowers staff to make a formal request to take time off to pursue accredited programmes leading to qualifications or unaccredited training in a job specific skill. Employees need 26 weeks completed service and only one application can be made in any 12 month period.

To apply an employee must name these regulations, the topic or subject of study, where and when it will take place, who is supervising it and what qualification, if any, it would lead to. Also the employee must explain how the training will "improve the employee's effectiveness or the performance of the employer's business".

Just as in Flexible Working requests, employers must consider these requests seriously and can refuse them for "sound business reasons". The time off is unpaid and an employer does not need to pay for the training, however, as there is a direct benefit to the organisation, employers should be receptive to doing so. This right applies to employees of organisations with 250 employees or more from April and to all employees from April 2011.

(Poorly and unqualified employees aged 16 and 17 already have rights to paid time off for training – see the Connexions website for details)

Paternity Leave

Parents of babies born after 3rd April 2011 will be allowed to share their leave. Currently new mothers can take 52 weeks maternity leave, 39 of which are paid. The other main carer is entitled to 2 weeks' paternity leave. This leave is paid and has to be taken within 56 days of the birth. However, from next year a mother will be able to transfer up to 6 months of her leave to her partner if she does not take up her full entitlement. The partner must have completed 6 months service and have, or expect to have, responsibility for the upbringing of the child.

The legislation, which will apply to adopters too, is being introduced to give greater flexibility and more options to families raising young children. See future editions for more details on requesting this leave. Future editions will also update you on any changes to the length of parental leave and the amount of maternity pay. Both these issues are currently being discussed in Europe.

Fit Notes

As described in Newsletter (10) and email circulation Feb, fit notes replace sick notes this April. In addition to the old style statement that an employee is not able to work because of illness, this note will allow doctors to state what tasks an employee is fit to do, rather than the current "not fit for all work". The doctor will include comments on common, temporary measures to help an employee return to work, such as: phased return, altered hours or duties or workplace adaptations.

Data Defaulters' Fines

Organisations seriously breaching the Data Protection Act can now be fined up to £500,000 by the Information Commission. Typical examples will be failing to take adequate security measures such as encryption of data and loss of laptops (that may worry some government departments!) Penalties will be determined by an organisation's financial resources, the severity of the breach, any external factors outside the organisation's control and any preventative measures taken.

Upcoming legislation to watch out for

The much awaited Equality Bill which we've written about in several of our earlier editions, and legislation giving employment rights to agency workers, should become law later this year. The latter will give agency workers with 12 weeks continuous service the same fundamental rights, such as holidays and pay as those enjoyed by permanent staff.