

# Pay and Employment Rights Service Newsletter

January 2010

## Fake Job Applications Reveal Discrimination

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*Free employment rights advice for West Yorkshire VCS organisations and employees*

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Last year the Department of Work and Pensions conducted a test into the extent of racial discrimination in recruitment across Britain. In a method similar to that adopted by other countries, it submitted matched job applications to nearly a thousand vacancies. The identical applications, except for the candidate's names which expressed ethnicity were randomly assigned to the jobs. The results published at the end of last year showed 10.7 per cent of the "white named" applications received a positive response compared to 6.2 per cent of those with ethnic minority names – clear discrimination despite the Race Discrimination Act 1976 and its various amendments.

In a DWP press release, Jim Knight, Minister for Employment at Welfare Reform, said: "We introduced laws to stop discrimination at work and strengthened them in 2000". But regrettably they do not appear to have levelled the playing field, yet.

This test came after a discussion on the Equality Bill, during which Liberal Democrat MP Lynne Featherstone obtained an agreement from the government that it would consider legislation to oblige companies to accept only 'anonymous' job applications. Under the proposals, firms would need to ensure the managers selecting candidates to be invited for interviews "do not know the gender, race, sexual orientation, age or marital status" of the candidate, or whether they were disabled. Many employers do this already by detaching all personal details from application forms before those shortlisting see them. **Would you agree this should be adopted as law?**

## Trade Union Duties/Activities: what's the difference?

Trade Union representatives have had a statutory right to paid time off for trade union duties, (such as negotiating terms and conditions, discipline matters, safety issues) and training for over 30 years. They also have the right to reasonable unpaid time off for trade union activities, (e.g. taking part in branch meetings). ACAS clearly explains the difference in a revised code. The code which has a section on Learning Representatives too, came into effect from 1/1/10. For more information, see <http://www.acas.org.uk/CHttpHandler.ashx?id=274>

## Expenses only?

A recent tribunal ruled that appointments on an expenses only basis are illegal and all workers are entitled to the rates set by the National Minimum Wage legislation.

This decision confirms that

workers can not be denied their statutory rights even if they have entered into the agreement willingly.

Unions have welcomed this judgement as an important step in banishing exploitative employers.

## Equality Bill When?

The much publicised Equality Bill has reached final committee stage in the House of Lords. However, this does not mean it is any nearer statute, as every clause is debated and votes are taken on every proposed amendment until agreement is reached. With no guillotine or time limit it's hard to say when to expect it.

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*The best way to keep up  
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## The PERS Team Expands Again

In our summer edition we were pleased to announce the receipt of further funding from the Big Lottery. This was to expand our Employments Rights services throughout West Yorkshire. We have since enlarged our team.

Irene previously worked for a local authority advice service providing employment advice and representation in employment tribunals. She is looking forward to making new contacts among voluntary sector organisations, and is the person to ring (or e mail) if you want a free 'healthcheck' of your employment policies.

Sue has worked in the West Yorkshire voluntary sector for over 20 years as a volunteer, development worker, advocate and manager. She knows how difficult it is for the VCS to get advice and information which larger organisations take for granted. She is keen to bring this experience to the team to make sure that PERS' valuable services are available to the groups, organisations and individuals who need them most.

Irene and Sue join Ros, Juliet, Nazia and Anne. Together they will be providing free employment law advice, consultancy and training courses throughout West Yorkshire. Around the same time, Dawn joined Hilary and Michelle in the admin team.

If you have any comments on the service we provide, please do not hesitate to get in touch, [director@pers.org.uk](mailto:director@pers.org.uk)

## Training Programme

- 4<sup>th</sup> Feb**      **Redundancy, Leeds**
- 9<sup>th</sup> Feb**      **Recruitment and Selection, Wakefield**
- 23<sup>rd</sup> Feb**    **Recruitment and Selection, Bradford**
- 2<sup>nd</sup> Mar**      **Ending the Employment Contract, Wakefield**
- 4<sup>th</sup> Mar**      **Developing Policies, Halifax**
- 20<sup>th</sup> Apr**     **Equality and Diversity, Wakefield**
- 27<sup>th</sup> Apr**     **Keeping it Legal, Leeds**

## Editor's Column

In the last edition we had a poll about the new Vetting and Barring Scheme and there was a great response. The majority stated the employer should pay all the fees, see previous edition on our website. One reader stated "there is no benefit whatsoever to the employee in paying out £64 of their own money to undergo yet another invasion of privacy in order to meet an organisation's legal obligations".

This edition's poll is on dress code. In January an appeal tribunal ruled it was not sex discrimination to ask a policeman to cut his hair, but not a police woman as both sexes had to look smart in "a traditional sense". So can a man with long hair look smart at work?

**A** Yes      **B** No      **C** Depends on the profession

Let me know what you think, [anne@pers.org.uk](mailto:anne@pers.org.uk)

## In the News: Recent case law - Bullying

Both ACAS and Unison reported this month an increase in the numbers of staff reporting bullying at work and cited the recession as the cause.

Running a business has become more difficult as organisations struggle to survive. Interactions between managers and staff have become more demanding as circumstances develop greater urgency. This has been causing increasing levels of stress which have resulted in staff feeling bullied. In some cases treatment has been so bad, staff have felt forced to resign. **Is bullying used to keep costs down or are staff more sensitive?**

### What is bullying?

"Persistent, offensive, abusive, intimidating, malicious or insulting behaviour, abuse of power or unfair penal sanctions, which makes the recipient feel upset, threatened, humiliated or vulnerable, undermining their self-confidence" Dignity at Work, 2007

### Recent Cases

Bullying often leads to unfair dismissal claims or dismissals, which you may have seen in the news. Firstly a sports reporter, was awarded almost £800,000 after suffering "a consistent pattern of bullying behaviour". This included discipline proceedings for alleged inaccurate reporting and one occurrence of lateness. The tribunal ruled these were a pretext to "get rid" of him as he refused to investigate a tip that Arsenal were to play in purple shorts. In another case, an inquiry led to the dismissal of two Tower of London yeoman following their bullying activities against the first female warder. It is reported that their teasing turned nasty and notes were left in her locker.

**Then in a further case** an employee resigned and claimed constructive dismissal after monitoring systems, which he described as "an act of humiliation" were instigated after he failed to follow the organisation's reporting procedures. The court noted that this course of action was implemented to ensure compliance with those safeguarding practices and this was more important. Further, it did not amount to a "punishment or sanction but a legitimate management instruction", so his claim failed.

### Being Bullied? What do you do?

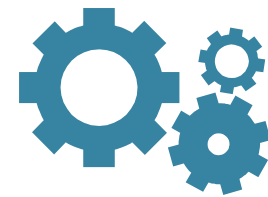
There are several things you can do to stop the bully. Firstly, walk away from the situation and then makes notes of it, i.e. time of day, words spoken, tone, its affect on you, who witnessed it. Later confront the bully and tell them exactly what has upset you. If you feel tentative doing this, seek support from a union representative or colleague. It may be that others are being bullied too. Try to always maintain a professional attitude to all colleagues and lead a full life outside work. This will boost your confidence. Above all report it to your line manager or some other senior member of staff. For more information, see <http://www.dignityatwork.org/default.htm>

## Changes to Awards from 1<sup>st</sup> February

Following a decrease in the Retail Price Index (RPI) the government has announced a decrease in the maximum amounts awarded at employment tribunals in e.g. unfair dismissal cases. The compensatory award which recompenses financial loss incurred by an individual as a result of their dismissal drops almost £1K to £65,300. Also, the guarantee payment, used mainly in lay – offs, decreases by 30p to £21.20. Finally, the amount of a week's pay, usually used in redundancy pay calculations is frozen at £380 till Feb 2011.

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## Snowed In, Snowed Out – did you get to work throughout January?

So far we have had the best or worst, depending on your view point, winter for decades and it's not over yet. We were all affected by the sheer volume of snow that fell and treacherous black ice. Many didn't get to work as they were snowed/iced in, or there was no transport, or had to stay at home as schools were shut. Some did get there, but feared the worst - being stuck - so went or were sent home early. Finally there was the odd one or two who trudged through it all slipping and sliding en route, but as no one else did, had boring but productive days.

To mitigate their losses employers reacted differently to staff shortages. Some classified absences as paid or unpaid leave. Another tack was to acknowledge only hours worked, but others were more flexible and credited staff with a full day if they got in at all. A further approach was allocating the extra commuting time as work time. Finally, some employers varied start and finish times. This meant staff did not have to travel in darkness, which is more dangerous, nor battle with the traffic as well as the weather.

Employers have a duty of care and if they decide, when exercising this to shut the workplace then they should pay the full shift, though they may expect staff to work from home. Also employers must pay all hours at work, but there is nothing to stop them deducting pay for hours not at work. For some this was financially crippling, but could be off set by home working. This saves on commuting time and frees up what transport there is for those that have to travel. But not everyone can, they may not have the resources or their children may be very demanding.

All employees are protected against unauthorised deductions from pay, but at the same time are contracted to turn up for work every day, so all must make a valiant attempt to do so, unless they have pre-arranged to work from home. It is up to the individual to assess the risks and if in doubt discuss this with their manager. An employee should be able to justify any absence to their manager, especially if a neighbour did get to work.

### **Dependant's leave**

A school closure and looking after children is a different matter. All employees irrespective of service are entitled to dependant's leave. This is unpaid and is specifically for making alternative arrangements to look after the child, not looking after the child itself. But how much time off?

That is very much down to the organisation and the situation. Some organisations will give a contractual amount e.g. 5 days paid care leave per year, others won't be so generous. So to minimise monetary losses, some parents or guardians took it in turns and looked after a few children in the one house. As well as freeing up some to go to work, it cut down on heating bills.

Be prepared for the next snow fall, by putting flexible measures in place now. Also, if the emergency services are advising essential travel only, then don't pressurise staff to take undue risks by journeying to work. Above all be transparent and consistent.