

Pay and Employment Rights Service Newsletter

Oct 2009

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Conference highlights:

TUC The TUC called for employers to drop unsuitable "footwear codes & practices" e.g. female customer - facing staff walking or standing in high heeled shoes all day.

The General Secretary **Brendan Barber** said: "Heels may look glamorous on catwalks, but they're not appropriate for day-to-day work wear. These dress codes - apart from being blatantly sexist - can lead to long-term foot and back problems." For more information see TUC guidance: <http://www.tuc.org.uk/extras/footwear.pdf>

However, Tory MP Nadine Dorries said "I'm 5ft 3 and need every inch of my Louboutin heels to look my male colleagues in the eye."

TUC Gordon Brown stated "I believe that the fight for fairness must include agency workers".

Hiring staff legally – how complicated is it?

Very, as Baroness Scotland recently discovered. The media has delighted in reports that the government's chief legal advisor employed a Tongan housekeeper contrary to the Immigration, Asylum and Nationality Act, 2006. The woman allegedly overstayed her student visa and hence was no longer entitled to work in UK.

The Act made it an offence to employ someone not entitled to work in UK, whether in full knowledge of this or unknowingly. As the Baroness discovered last month, the latter is not an adequate defense, and she was fined £5,000. However, she could have been excused punishment if she had shown that she had followed the "*prescribed requirements in relation to the employment*". These are complicated, see Arts 3 to 6 of the Immigration (Restrictions on Employment) Order 2007 or <http://www.pers.org.uk/appendrecsel.pdf>

In essence, employers are required to check the validity of **all** new employees' right to work in UK by examining their personal documents, e.g. passport. In doing so the employer should take all reasonable steps to check the validity of the documents and retain copies securely.

The UK Border Agency, who investigated the case said it was the latter the Baroness failed to do. There was therefore no proof that she checked any documents at all. If the Baroness, who is well known for her work at the Home Office tightening immigration legislation, finds it complicated, what about the rest of us? For more info see www.pers.org.uk or <http://www.bia.homeoffice.gov.uk/>

From this we presume the government will implement the EC Agency Workers directive. This will give comparable basic employment terms and conditions to agency workers and "temps", (if certain conditions are met, such as length of service.)

Conservatives Their announcements included: raising the retirement age to 66 by 2016, freezing the majority of public sector pay and cutting tax credits for high earners.

What do you think? Will any of this affect you? What dress code rules or norms upset you? Are temps worth the same as permanent staff and are you looking forward to an extra year of work?

PERS upgrades quality standard

Last month we achieved re-registration of our advice services by the Legal Services Commission (LSC) Quality Mark. We undertook a rigorous and detailed audit which looked at all our advice policies and procedures as well as our governance, internal management and our signposting and referral arrangements for providing a 'seamless service' for any kind of enquiry. Following the successful completion of this demanding process, we are now fully accredited for providing "General help with casework and telephone". This means we are accredited to provide detailed ongoing advice and assistance as well as general information on all employment matters.

Free employment rights advice for Voluntary and Community Sector (VCS) organisations and workers in West Yorkshire from your local friendly experts

01924 428030

www.pers.org.uk

Q: *How do you keep up to date with changing employment legislation?*

A: *Try PERS training courses!*

See web site for our updated programme.

How up to date are your employment documents?

Free contract consultancy – contracts, terms and conditions, employee handbooks - for VCS organisations in West Yorkshire

Home Working Team Expands

Do you or are you thinking about working from home?

PERS Home Working service has been provided by Abad Ghani for several years. For many of these years he has been the sole worker in this department, but now thanks to a Big Lottery grant under the Reaching Communities Programme the team has been expanded.

Debra Johnson joined the Home Working Team in July when the new project started. She previously worked in banking and more recently as an Employment Placement Officer and a Connexions Personal Adviser. She said "I am looking forward to supporting people to work or to set up a business from home."

Jamila Karolia joined the team in August. This is a new challenge for Jamila which she is eager to take on. Sorayya Hussain also joined the team.

Training Programme

- 27th Oct** **Absence/Performance Management, Leeds**
- 3rd Nov** **Ending Employment Contracts, Wakefield WF1**
- 10th Nov** **Managing People, OCN accredited. Halifax.**
- 17th Nov** **Equality and Diversity, Halifax.**
- 3rd Dec** **Absence/Performance Management, Bradford**
- 19th Jan** **Basic Employment Rights and Model Policies, WF1**
- 9th Feb** **Recruitment and Selection, WF1**

We are now planning our Spring programme which will encompass all of West Yorkshire. For full details of our programme check our website www.pers.org.uk or the West Yorkshire learning portal: <http://www.westyorkslearning.org.uk/>

"This website aims to promote learning opportunities to frontline VCS organisations in the region. The site co-ordinates training provision by West Yorkshire Local Development Agencies partners (PERS is one) and is part of a Modernisation Project funded by Capacity Builders."

The site has 4 search facilities: category, location, date and alphabetic. It also has provisions for making further enquires to the course providers, bookings, and even adding the course to your Outlook diary.

Readers' Letters

Regretfully, no one contacted me regarding the articles in our last edition. Did nothing arouse comment? Well perhaps this reader poll will:

Who should pay for the new ISA registration fees (see back page)?

A Employer

B Employee

C Both – employer pays CRB check as now, employee pays for their registration

email your vote to anne@pers.org.uk

In the News: Recent case law

This quarter's topical decisions in our courts focus on holidays and disability.

Holidays and Sickness

Earlier this year we reported the European Court's (ECJ) decision that workers on long term sick retain the right to annual leave. This is because the purpose of annual leave is rest and relaxation, whereas as recovery is the principle behind sick leave.

The ECJ also declared that the right to annual leave is not extinguished at the end of a holiday year, and it was up to member states to decide the timing of leave, i.e. to be taken whilst on sick leave or at some time afterwards.

Paid holidays are enforceable under The Working Time Regulations, but the "regs" do not have any provisions to carry over leave from one year to the next. Therefore as holiday now accrues during sick leave, it would appear that if claimed, holidays must be paid by the employer.

At this point, the case returned to the House of Lords, which didn't answer the above question directly. Instead it declared that unpaid holidays can be claimed as a series of unlawful deductions. This means unpaid holiday from previous leave periods can all be claimed together provided the last non payment of holiday (deduction) was 3 months or less ago.

Nor did the Lords give guidance on what would happen if a worker didn't claim paid holidays. Does the employer insist that leave is taken or is it lost?

Then, last month the EJC ruled that a period of illness whilst on holiday does not count towards the minimum period of 4 weeks annual leave.

Consequently a worker must be granted another period of leave to ensure rest, leisure and relaxation if a period of illness has deprived him of this right.

It is thought that this right will apply for workers becoming sick before and during annual leave. But how can it be monitored/managed especially for those organisations with annual shutdowns?

Employers are urged to review their sickness reporting procedures and ensure their absence management policy is robust to minimise abuse of this clarification of holiday entitlement.

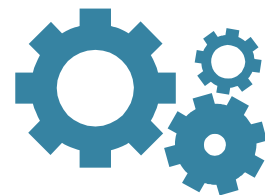
Can an apparently healthy, robust individual be disabled?

The Disability Act, 1976, states that in order to be covered by the Act, a person must have "a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities". The Act also clarifies the situation if the symptoms are no longer apparent – those who appear able bodied are also protected provided they previously suffered from a qualifying disability that is likely to recur.

The question of "likely to recur" came before the House of Lords recently. Initially it was argued that it means "more probable than not" or "more than a 50/50 chance" but this was deemed incorrect by the Lords. They decided the proper meaning should be broader and came up with "could well happen". They continued with an example - if a GP continued to prescribe medication for the impairment, then there is a clear indication that a reoccurrence "could well happen".

Therefore employers are required to look at reasonable adjustment for individuals with obvious disabilities and those with less apparent, but in no way less insidious, disabilities. Reasonable adjustments include adjusting premises, modifying equipment, re-allocating some duties, transferring or re-locating the individual, altering hours of work, giving training, modifying procedures or providing supervision, a reader or interpreter.

*Do you know your
statutory rights?
What about contract law?
Check with PERS
on:-
01924 428030
or
www.pers.org.uk*



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

Employment law is updated twice each year, in April and October. This month's changes were:

Annual Increase in rates for the National Minimum Wage (NMW). Rates for 2009 – 2010 are:

- Adults aged 22 years and over - £5.80 per hour (from £5.73.) This was £3.60 10 years ago.
- 18 – 21 year olds - £4.83 (from £4.77). This was £3.00 when introduced in 1999.
- 16 -17 year olds - £3.57 (from £3.53). There was no such rate in 1999.

Also, from Oct 2010 the adult rate will apply to 21 year olds. A more practical arrangement. Lord Mandelson said of the increase: *"I am very proud of the difference it (NMW) has made to the lives of the UK's lowest-paid workers. It protects them from exploitation and also creates a level playing field for business."* However, the GMB said low earners need more help during the economic downturn as they have the greatest difficulties meeting higher outgoings.

Redundancy Rates

The maximum statutory redundancy rate for one weeks' pay rises from £350 to £380 this month, but not again in Feb, its usual increment date.

Maternity and Paternity Provisions.

The Government's planned extension of statutory maternity pay (SMP) and statutory adoption pay (SAP) to 52 weeks has been abandoned and the scheme allowing employed fathers to take up to 26 weeks Additional Paternity Leave (APL), if their partner returns to work will be implemented for babies born after 3rd April 2011, a year later than we previously reported.

Criminal Record checks for all MPs?

You may have seen the above headline or heard that prominent authors will not be allowed into schools for book readings because of new legislation. This is due to the introduction of a new "Vetting and Barring Scheme" (or VBS) **intended** to improve (but some remain sceptical) our current arrangements that block unsuitable people from working with children or vulnerable adults.

Introduced after the Soham murders and the Bichard enquiry, the scheme creates an Independent Standards Authority (ISA) which will maintain 2 lists of persons barred from carrying out "regulated activity" - Adult/ Children Barred List. After 12th October it will be an offence if a barred individual seeks or works with vulnerable groups or for "Regulated Activity Providers" knowingly to employ such a person. From November 2010 the law will require all new employees and volunteers wanting to work with children and vulnerable adults to be registered with the ISA. It will then become illegal to employ people to do such work if they are not registered. Registration will begin in July 2010 and costs £64 (£28 of which will be the new ISA cost. Those in voluntary work will be exempt from the new ISA charge.) Who should pay this? See our poll on page 2. Also <http://www.isa-gov.org.uk/> for more information.

Tips and National Minimum Wage (NMW)

Since 1999, tips "paid directly" to waiting staff by a customer have not been counted as wages under the NMW legislation. However, tips collected by an employer, e.g. tronc, service charges distributed via the payroll, are used to make wages up to NMW. This practice will cease from October 2009. Note tips should be declared as income to the HMRC.