



Welcome to the December edition of the ELiAction newsletter for 2010, providing you with useful information regarding changes to employment legislation and best practice.

### **BRIBERY ACT 2011**

Our newsletter this month mainly focuses on the Bribery Act which comes into force next April. The Act is already available for you to read and can be found by following the link below. However, it is important to note that further guidance in relation to the Act is expected to be published in January 2011.

<http://www.legislation.gov.uk/ukpga/2010/23/contents>

This piece of legislation is complicated as it tries to encompass bribery in all its forms and prevent loopholes. In essence however, it is probably fair to say that, if it 'feels like bribery', it is likely to be covered by the Act.

The Act introduces criminal offences 'of receiving' and 'of giving bribes' (sections 1 and 2) and bribery of a foreign official (section 6). These offences can be carried out by companies and/or individuals (the body corporate and/or the senior officer) and can be committed directly or via third parties. The maximum penalty for these offences committed by an individual is 10 years imprisonment plus a fine. A company could face unlimited fines.

Even if the offence takes place abroad, the UK courts will have jurisdiction to deal with the company and/or individual if any part of the offence takes place within the UK or where the party committing the offence has a 'close connection' to the UK.

The Act also introduces 'an offence of a commercial entity failing to prevent bribery (section 7,8 and 9)'. It is therefore important that in order to have a strong defence,

that the Company in question has in place adequate policies and procedures which are designed to prevent bribery.

The descriptions of bribery in the Act are quite confusing but are aimed at a company and/or individual who has been rewarded for 'improper performance' of a 'relevant function or activity'.

The definition of 'relevant functions or activity' is fairly wide and encompasses all functions of a public nature, all activities connected with a business and any activity performed in the course of a person's employment. Further information in respect of the definitions covered by the Act are contained in the statute.

Going forward all commercial and public-sector organisations would be well advised to prohibit bribery in any form whether direct or indirect and by or for the organisation and commit to implementing systems to counter bribery.

If you would like any further information in respect of the Bribery Act or would like to discuss the impact that this may have on your policies and procedures please speak to one of the EliAction Team.

### **AGENCY WORKER REGULATIONS**

As a reminder, the Agency Worker Regulations come into force in October 2011. The new Government had made a commitment to review the Regulations making any changes or revoking the Regulations if it deemed it appropriate, however the Government announced on 19 October that it will not be amending the Agency Workers Regulations.

You can view the Regulations by following the link below:

<http://www.legislation.gov.uk/uksi/2010/93/contents/made>

Guidelines in respect of the Agency Workers Regulations will be published early in 2011, once the guidelines are available we will be able to update you further in respect of the impact that the Regulations will have.

### **INCREASE IN TRIBUNAL AWARDS**

From 1 February 2011 the maximum compensatory award for unfair dismissal will rise from £65,300 to £68,400 and the maximum amount of a week's pay, used to calculate statutory redundancy pay (among other things), will rise from £380 to £400.

### **INCREASE IN STATUTORY PAYMENTS**

From 11 April 2010, the rates of statutory maternity pay, adoption pay and paternity pay will rise from £124.88 to £128.73 per week. Statutory sick pay rates will also increase from £79.15 to £81.60 per week.

### **EXTREME WEATHER CONDITIONS**

Once again we are facing extreme weather conditions and as a result many Companies are having to implement strict policies in respect of time off for individuals when they are unable to get to work as a result of the impact of the adverse weather conditions. From a statutory perspective employees are able to take unpaid time off for dependants so that the employee can deal with emergencies involving a 'dependant' – this could be the employee's husband, wife, partner, child, parent, or anyone living in his/her household as a member of the family. This would cover situations where the employee needs to care for the dependent due to other care arrangements being disrupted due to the weather.

However, there is not a statutory right to time off just because of adverse weather unless it falls under the definition as described above. Companies need to give careful consideration to their policies in respect of this and what action should be taken in preparation for such conditions, actions may include:

- whether the Company will treat such time off as paid or unpaid and if the time off is paid is this subject to an upper limit;
- whether any such time off should be made up at a later date;
- whether such time off can be treated annual leave, Companies can only insist that this is taken as annual leave where the contract of employment makes a specific provision for this.
- what employees are expected to do in preparation for any days when they may not be able to come into work, this may include taking work home, ensuring deadlines are met, diverting phones and emails;
- clarity regarding the procedure for reporting any such absence and maintaining contact with the Company.



If you would like assistance in updating your policies, would like advice on any employment issues, or would like to discuss any other HR and legal requirements please contact Employment Law in Action Limited on 01494 817193 or email [info@ELiAction.com](mailto:info@ELiAction.com).

In giving comment and advice in the newsletter, we do not assume legal responsibility for the accuracy of any particular statement. If you have specific views which you wish to discuss we would be pleased to assist you.