

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

Extreme Weather Conditions

What can we say! The cold snap has caused complete chaos throughout the UK bringing extreme weather conditions including heavy snow. Many companies have been adversely impacted as a result, with employees unable to get to work due to difficult travelling conditions, this has also been compounded by school and other child care facilities closing during the worst affected days.

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.

Risk Assessments for Pregnant Employees

In the recent case of O'Neill v Buckinghamshire County Council, the obligation for an employer to conduct a risk assessment for a pregnant worker was considered. The Employment Appeal Tribunal stated that the following preconditions must be met in order for the obligation to carry out such an assessment to apply:

- (a) the employee has notified the employer in writing that she is pregnant;
- (b) the work the employee carries out is of a kind which could involve a risk of harm or danger to the health and safety of the expectant mother and/or her baby;
- (c) the risk arises from either processes, working conditions or physical, chemical or biological agents in the workplace.

Where employers fail to carry out a risk assessment and these preconditions apply then it will be considered discriminatory. It is far safer for employers to have a standard practice of always carrying out a risk assessment when they are first informed that an employee is pregnant. Where risks have been identified employers must then take relevant action to minimize the risk, they are also obliged to provide the employee with comprehensive and relevant information on the identified risks to her health and safety.

Dress Code

In the recent case of Dansie v Metropolitan Police it was decided that where a male employee had been required to cut his shoulder-length hair that this did not amount to discrimination or harassment under the Sex Discrimination Act simply because a

female employee would not, in similar circumstances, have been required to cut her hair.

However the Employment Appeal Tribunal considered whether or not the overall Dress Code was equally balanced between the sexes in that the employer's dress code as a whole was asking its employees to display an equivalent level of smartness as between the sexes.

The EAT was satisfied that the Tribunal had been entitled to find on the evidence that a female recruit who failed to comply with the dress code necessary for the service would have been treated in the same way.

Right to Legal Representation

The Court of Appeal has recently handed down its decision in *G v X School*, this case concerns a teaching assistant. An allegation had been made that he had had sexual contact with a 15 year old boy. Following a disciplinary hearing the teaching assistant was dismissed and he was reported to the Independent Safeguarding Authority (ISA) so that it could be determined whether he should be placed on a barred list, which contains a list of individuals who are deemed as unsuitable to work with children. In this case G brought proceedings challenging the fact that he had not been allowed legal representation at the hearing.

Employees have a statutory right to be represented by either a work colleague or trade union representative. In this case the Court of Appeal, found that the right to practise a profession was a "civil right or obligation", that an ISA listing would fundamentally limit G's ability to practise his profession and that the school's internal process would have a "substantial influence or effect" on the decision-making of the ISA. Therefore due to the impact of this on G's future career he was entitled to legal representation at the disciplinary and appeal hearings.

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Employment Law in Action

This is a significant case which has an impact on organisations that employ those in a professional capacity as it extends the right to be accompanied at hearings by a legal representative.



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.

Our business partner Metzger Search & Selection are able to offer qualified and referenced senior level specialists on an assignment basis in a number of key functions.

If you would like to discuss any interim management opportunities you have please contact James Metzger on 01628 817102 or email James.Metzger@metzger.co.uk

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.