

HETHERTONS' EMPLOYMENT UPDATE

Autumn Edition

Swine Flu causes headache for employers

The last few months have seen many employers struggling to staff their business as a result of swine flu related absences.

Absences have been due not only to employees actually coming down with the virus but also employees remaining at home to care for sick relatives or deal with childcare problems. The recorded cases of swine flu have started to decline but experts are still predicting a surge of cases as winter sets in.

The Chartered Institute of Personnel and Development (CIPD) has urged businesses to consider their contingency plans for mass staff absences. There are a number of things that employers can do to help

themselves in the event of a swine flu outbreak amongst staff;

- Cross-training staff in critical areas of the business.
- Consider remote working to prevent the spread of infection.
- Encourage customer self-service options such as telephone and online transactions.

There is a real risk that employers will discount a swine flu outbreak given how quickly the first wave subsided. There

remains however a very significant threat of a flu pandemic and experts predict that this could cause staff absences in the region of 12%. Employ-



ers need to act quickly to make sure they have adequate contingency plans in place.

Employers are recommended to use basic precautions at work such as asking employees to wash and sanitize their hands regularly. If using tissues make sure they are thrown away after use to reduce the risk of the spread of infection.

October Changes

Increase to National Minimum Wage

From 1st October 2009 the annual increase to National Minimum Wage (NMW) took effect:

- Standard (adult) rate rose to **£5.80** per hour from £5.73
- Development rate (employees aged 18-21 or on training schemes) rose to **£4.83** per hour from £4.77
- Young workers rate (workers aged 16 & 17) rose to **£3.57** per hour from £3.53

Increase to statutory redundancy pay

Despite fierce opposition to these changes at a time when businesses need all the financial help they can get the government went ahead with plans to implement this increase. From 1st October 2009 the maximum limit on a week's pay in relation to the calculation of redundancy increased from £350 to **£380**.

Prohibition on using tips for National Minimum Wage

From 1st October 2009, employers are prohibited from counting service charges, tips and gratuities towards the payment of National Minimum Wage.



Home office clamps down on illegal workers

A single border force and police-like powers for front-line staff of the UK Borders Agency (UKBA) was introduced in April 2008 to ensure that robust action is taken with regards to illegal workers. UKBA encourages anyone who suspects illegal workers are being employed in a business to call Crime Stoppers and anonymity is assured.

More than ever employers need to ensure they are complying with the legal obligations placed on them to check that all new employees are entitled to work in the UK. If the checks are undertaken, the employer has a defence against conviction or payment of a fine if it is subsequently found they have employed an illegal migrant worker. With penalties of a prison sentence of 6 months and fines of up to £10,000 per illegal worker, if the employer knowingly employs illegal workers it is vital to undertake these checks.

UKBA published a "name and shame" list of all employers who have been found to employ illegal workers together with the value of the fine. Remember the legal requirements include retaining a copy of the documents you have checked as Baroness Scotland found out to her cost in recent weeks, being the subject of a £5,000 fine.

To protect your business against allegations of race discrimination it is important to check the entitlement to work in the UK with all new employees and not just foreign workers.

Holiday pay for employees on long term sick

Recent decisions from the European Court of Justice (ECJ) and subsequently the House of Lords have clarified to some extent a rather murky and uncertain area of law. The issues decided in the recent cases related to;

- Whether holiday entitlement accrues during periods of sick leave;
- Whether a worker on sick leave can take paid annual leave instead;
- Whether a worker whose employment is terminated after being on long-term sick is entitled to pay in lieu of untaken holiday.

After a ruling by the ECJ the House of Lords confirmed that:

- Statutory holiday entitlement did accrue under the Working Time Regulations during periods of sickness;
- The Working Time Regulations should be interpreted as allowing workers to take paid statutory holiday during periods of sick leave. Workers cannot be required to take their annual leave during periods of sick leave;
- As holiday continues to accrue during periods of sick leave a worker would be entitled to a payment in lieu of accrued but untaken holiday upon termination.

These rulings have helped to clear up the issues in relation to sickness and holiday, but employers will have to deal with the practical implications of these decisions. Workers will be able to take paid holiday during periods of sick leave when previously they would only have been paid statutory sick pay. Or if workers choose not to take their holiday during periods of sickness they do not lose the right to that holiday at the end of a holiday year. If they have been off on long-term sickness absence this holiday would roll over into the next holiday year causing further headaches and costs for employers. Therefore, in terms of cash flow, employers may prefer to encourage workers on sick to take their statutory leave entitlement in the leave year when it accrues.



If you have any queries or would like advice on any employment issues please do not hesitate to contact one of our team of expert employment solicitors:

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