

April Newsletter from Russell Personnel & Training

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1. Corporate manslaughter
2. Employment update
3. Last word

1. Corporate manslaughter

On 6th April the Corporate Manslaughter and Corporate Homicide Act 2007 came into force. The prosecution of companies for gross negligence, manslaughter or culpable homicide has been notoriously difficult because the law requires proof that a "directing mind" (i.e. an individual at the top of the organisation who can be said to embody its decisions or actions) was guilty of the offence.

Prosecutions will be brought against the organisation itself, not specific individuals. An organisation can be guilty of the offence if the way in which its activities are managed or organised causes a death and amounts to a gross breach of a relevant duty of care to the deceased. A substantial part of the breach must have been in the way activities were managed by senior management. The courts will look at management systems and practices across the organisation, and decide whether an adequate standard of care was applied to the fatal activity.

In determining liability, juries will consider the extent to which an organisation was in breach of safety requirements, and the severity of those failings. The way in which activities were managed or organised must have fallen far below what could reasonably have been expected. The Act covers companies operating in all sectors, provided protection for employees, customers, visitors and where appropriate, members of the public.

Organisations found guilty will be ordered to take remedial measures to ensure they put in place adequate safety systems and procedures. They may also be ordered to make public what went wrong and what is being done to repair the situation.

The new Act is intended to complement, not replace, other forms of accountability such as prosecutions under health and safety legislation and is specifically linked to existing health and safety requirements.

Actions for employers

- Consider who constitutes a 'senior manager' and ensure they have appropriate training for their role.
- Provide update training for senior managers on their health and safety responsibilities.
- Review all health and safety policies to ensure that statements made and standards set are achievable.
- Check that your insurance cover includes legal protection in the event of criminal charges for corporate manslaughter.
- Review your health and safety culture to promote a safer environment for your employees, visitors and, where relevant, the public.
- Revisit your disaster management plan and ensure there is a protocol for dealing with the authorities and working with legal advisers if a fatality occurs.

2. Employment update

Equal treatment of part-time workers

Claimants alleging discrimination under the Part Time Workers Regulations need not show that part-time status was the only factor influencing the employer.

Miss Sharma and her colleagues were employed as part-time lecturers for Manchester City Council's Adult Education Service. Their contracts contained a term that allowed the council to reduce their hours, subject to a minimum annual total of one-third of the hours worked in the previous year. Not all part-timers were subject to this term. By way of a cost-saving exercise, the council triggered the reduction in hours for the part-time employees who were subject to this specific term and many of their hours were substantially reduced.

Miss Sharma complained that the reduction clause, and the reduction itself, amounted to less favourable treatment, as the term did not apply to full-timers.

Agreeing with Miss Sharma, the EAT said that part-time status need not be the only reason for less favourable treatment. For less favourable treatment to be potentially unlawful, the part-time status need only be one of a number of reasons and not the whole or only reason. It didn't matter if other part-time employees were not also subject to the less favourable treatment. *Sharma and others v Manchester City Council [2008]*

This decision means that even if there are a number of reasons for treating part-time workers differently from full-time workers, employers might still be liable for discrimination against part-time workers. Accordingly, any such variations in treatment should have very sound justifications.

Changes to statutory rates

From 6 April 2008, the following legislative developments took effect:-

- Statutory Sick Pay increased to £75.40 per week.
- Statutory maternity, paternity and adoption pay increased to £117.18 per week.
- National Insurance Contributions thresholds and limits are altered. The new lower and upper earnings limits are £90 and £770 respectively. The primary and secondary thresholds are now set at £105.

Changes to the SDA 1975

In 2007 the EOC successfully challenged the UK Government in the High Court, resulting in a finding that the Government had not properly implemented aspects of the sex discrimination directive. New regulations correcting the situation came into force on 6th April 2008.

The key changes are:

- the causal link between the effect of the unwanted conduct and the gender of the person being harassed has been removed. Claims can now be made if the unwanted conduct is related to the gender of the victim or any other person. This enables linked claims, for example, claims by witnesses; the person who considers that his dignity has been violated or that the conduct creates an offensive and degrading environment for him need not be the primary recipient of that conduct.
- Employers must take reasonably practicable steps to protect employees from harassment by third parties where harassment is known to have occurred on at least two other occasions.
- The requirement of a comparator who is not pregnant nor on maternity leave is removed in claims for discrimination on grounds of pregnancy or maternity leave.

Women whose baby is due on or after 5th October 2008 will have greater rights. The regulations make it clear that women are entitled to discretionary bonuses calculated with reference to the two week compulsory maternity leave.

In addition, and most importantly, the regulations eliminate the distinction between different types of maternity leave in relation to terms and conditions. Women will now be entitled to the same (non-pay) benefits irrespective of the type of maternity leave they are taking.

Disclaimer: The notes above are for guidance only and professional advice should be sought where appropriate.

3. Last word

Accident alert

Reasons for accidents (allegedly given to insurance companies)

- The pedestrian ran for the pavement, but I got him.
- My car was legally parked as it backed into another vehicle
- I started to slow down but the traffic was more stationary than I thought.
- Coming home I drove into the wrong house and collided with a tree I don't have.
- I pulled away from the side of the road, glanced at my mother-in-law and headed over the embankment.
- In an attempt to kill a fly, I drove into a telephone pole.
- I was thrown from my car as it left the road. I was later found in a ditch by some stray cows.
- I pulled in to the side of the road because there was smoke coming from under the hood. I realized there was a fire in the engine, so I took my dog and smothered it with a blanket.
- I didn't think the speed limit applied after midnight.
- Windshield broke, cause unknown. Probably Voodoo.

NB No pedestrians, dogs, flies or cows were hurt in the making of this Last Word!

Thanks for taking the time to read this. Your feedback and comments are much appreciated.

Kate

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