

IN FOCUS

EMPLOYMENT NEWS

Training steams ahead

A new right to request time off for study or training is due to come into force on 6 April 2010 for employees in businesses that employ 250 or more people.

Employees will have the legal right to ask their employer to give them time away from their normal duties to undertake training to improve their effectiveness at work and the performance of their employer's business.

The right is to request time off: it is not a right to paid time off and it is a decision for the employer, if they agree to the request, as to whether or not the time off is to be paid.

The new right closely follows the model of the existing right to request flexible working, in particular:

- only employees who have been employed for more than 26 weeks will be entitled to make a request. The right does not apply to agency workers
- the procedure for a making an application closely mirrors the existing flexible working application procedure
- an employee may only make one application every 12 months
- employees are protected from suffering a detriment as a result of having made a request
- employers are required to consider a request and respond in a reasonable time period

- employers are entitled to refuse a request for specified business reasons (which closely mirror those available in relation to a flexible working application) or if, in the employer's view, the training would not improve the employee's effectiveness at work or the performance of their business.

Although the right only applies from 6 April 2010 to employees in businesses with 250 or more employees, the right is due to be extended to cover all employees in businesses of all sizes in April 2011.

Guidance for employers on the new right will be published in January 2010 on the Business Link website.



Read all about it

A recent case where a sports reporter, who worked for News of the World, was awarded nearly £800,000 for unfair dismissal and disability discrimination will serve as a reminder of the importance of following the correct procedures when managing absence and taking particular care when dealing with employees suffering from a stress-related illness.

The tribunal found that the sports reporter, Mr Driscoll, had fallen victim to a "consistent pattern of bullying behaviour" and that the disciplinary proceedings to which he was subject before going on sick leave was merely a pretext. The real reason for the disciplinary proceedings was simply that the editor wanted to "get shot of him". The editor wrote

in an email to the deputy editor that he wanted Mr Driscoll "out as quickly and as cheaply as possible".

The tribunal found the bullying continued after Mr Driscoll had gone on sick leave. Senior management sent him a barrage of emails, phone calls and visited his home to demand that he see a company doctor, despite Mr Driscoll's GP advising him to distance himself from the source of his stress.

The case shows how important it is to follow the correct procedures and also how what is said in an email may come back to haunt you in employment tribunal proceedings at a later date.

Visit our website at www.burges-salmon.com

Welcome

Welcome to the winter edition of **In Focus**, our quarterly update keeping you informed of the latest developments in employment law.

For further information on employment issues, please email chris.seaton@burges-salmon.com

Green issue

In future we intend to distribute our publications by email to reduce our environmental impact. This also has the advantage of eliminating the delay in printing and posting.

For some of you this will be the first time that you have received one of our publications by email. If it is, we hope you agree with our policy.

If you have received this newsletter by post, please let us have an email address for future mailings.

To contact us with your email address or if you have a particular need to continue to receive a copy by post, please email marketing@burges-salmon.com or write to Jayne Taylor at our Bristol address over the page.



Holiday on ice

The ECJ has ruled that a worker who was sick during a period of annual leave had the right to take his annual leave at another time after his recovery. The court ruled he was also able to carry over the annual leave entitlement into the next year if it was not possible for him to take it earlier.

However, this decision is arguably not applicable to private

sector employees in the UK because to some extent it is inconsistent with the Working Time Regulations. This decision (in the Spanish case of *Pereda v Madrid Movilidad SA*), is covered in more detail in our email alert, available at www.burges-salmon.com/practices/employment/news/news_item.aspx?id=7349

Taxing times

In the 2009 Pre-Budget Report, the Chancellor announced a number of measures with implications for employers, including:

- a further 0.5% increase in employee and employer national insurance contributions in 2011/12
- the new one-off Bank Payroll Tax payable by banks and other financial services firms. This will be chargeable at 50% on bonuses (in any form) over £25,000 awarded between 9 December 2009 and 5 April 2010
- changes to the proposals affecting the availability of

higher-rate tax relief on contributions to regulated pension schemes for those with an income of over £150,000 a year.

Separately, the Government has announced changes to its plans to cut tax relief on childcare vouchers, so that:

- from 2011, all new entrants to an employer-supported voucher scheme, including higher rate tax payers, will only get basic rate tax relief of 20%; and
- the scheme will be withdrawn completely for all users by 2015.

You're barred!

A new vetting and barring scheme has been introduced, designed to ensure that anyone who presents a known risk to children or vulnerable adults is prevented from working with them in certain regulated or controlled activities, although the Government has announced changes to its original proposals in the face of public criticism.

The new scheme is being implemented by the creation of the Independent Safeguarding Authority (ISA), changes to the Criminal Records Bureau (CRB) check and the creation of two new barred lists; one for children and one for vulnerable adults.

These lists must now be checked, through an enhanced CRB check, in relation to applicants for jobs that involve certain regulated or controlled activities, principally those focussed on working with children or vulnerable adults.

There is a phased roll-out of the scheme, starting with all new entrants to roles working with vulnerable groups and those switching jobs. These individuals can register with the ISA from 26 July 2010 and will be legally required to do so in November 2010, so that they may be monitored and their status reassessed if new information comes to light.

Going down

For the first time ever, the maximum compensatory award for unfair dismissal is to be reduced following the annual review of compensation limits.

The maximum compensatory award will drop from £66,200 to £65,300. This will apply where the effective date of termination

occurs on or after 1 February 2010. For unfair dismissal purposes, the event will be the effective date of termination.

The maximum amount of a week's pay used, for example, when calculating the basic award for unfair dismissal and statutory redundancy payments, will remain the same at £380.

News in brief

- The Equality Bill continues to pass through Parliament. It is expected to receive Royal Assent in Spring 2010, with the first provisions coming into force in Autumn 2010.
- Parental leave may be increased from 3 to 4 months within the next 2 years following proposals that the EU Council of Ministers have agreed to adopt in a revised parental leave directive.
- Consultation has begun on the maximum level of a fine that the Information Commissioner is able to impose on data controllers who commit serious breaches of the data protection principles. The Government proposes a maximum fine of £500,000

and is consulting on whether this is a proportionate sanction for serious contraventions.

- New guidance has been issued on the prevention of workplace harassment and violence in order to implement a European social partner framework agreement that was signed in April 2007. The guidance can be found at www.workplaceharassment.org.uk.
- ACAS has published a new Code of Practice on Time off for Trade Union Duties and Activities. The Code came into effect on 1 January 2010 and is available from www.acas.org.uk/index.aspx?articleid=2391.

In the office

Congratulations to **James Green** and his wife Kathie on the birth of their second child, a baby girl.

Congratulations to **Catharine Cooksley** who has now been promoted to Associate.

A reminder that our popular Hot Topics seminar is being held in Bristol on 28 January 2010 and in London on 4 February 2010. For details please go to www.burges-salmon.com/seminars or email seminars@burges-salmon.com

Narrow Quay House
Narrow Quay
Bristol BS1 4AH
Tel: +44 (0) 117 939 2000
Fax: +44 (0) 117 902 4400

Chancery Exchange
10 Furnival Street
London EC4A 1AB
Tel: +44 (0)20 7685 1200
Fax: +44 (0)20 7685 1266

www.burges-salmon.com

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A list of members, all of whom are solicitors, may be inspected at our registered office: Narrow Quay House, Narrow Quay, Bristol BS1 4AH.