

Welcome

Welcome to the February edition of our monthly newsletter. This is the last to be published from our current premises as we move to new premises at Hadrian House, Higham Place, Newcastle from Monday 15th February. This is an exciting venture for the team enabling us, as it will, to offer improved facilities and services to all our clients. We will also be joined in the new office by our Commercial Property colleagues as we look to focus in 2010 on the core commercial clients of the business. You are all very welcome to join us at our Opening Night Celebration on 25 February for which formal invitations will be issued shortly.

In the meantime in this month's bulletin we take a look at the unnecessarily vexed question of risk assessment for pregnant employees - there really is nothing to fear provided you have a proper process; and what might come out of the bribery bill currently passing through parliament.

Jonathon Stokes

Partner

Head of Dispute Resolution

Fancy a Bung?

Few businesses would consider any aspect of their operation to be caught by the provisions of the Bribery Bill but the current proposals may change that.

One aspect of the bill is that it proposes to make businesses criminally liable if they fail to prevent bribes being paid by people working for them. Knowledge will not necessarily matter; it is whether there are in place an appropriate fraud prevention strategy.

Interestingly enough, however, the bill makes it lawful for a broad range of Governmental and other agencies to provide or receive what would otherwise be bribes. These bodies include not just the police (who already have exemptions through the informant processes) but also prosecutors, HMRC, UK Borders Agency, Environmental Health and Trading Standards Officers and the like. Indeed, it may well turn out to be the case that anybody who is involved in the prevention, investigation or detection of "serious" crime may fall within the exemptions that would allow them both to give and to receive "bribes".

As one commentator has said, can the end ever justify the means? If you allow public officials to pay bribes in the hope of catching criminals, why not allow companies to make payments in order to win valuable contracts against foreign competitors.

Of greater concern might be how these matters are "policed". The Serious Fraud Office has already admitted that it has more cases to deal with than it can manage and the chances of pursuing one off bribe allegations are consequently remote.

Be that as it may, the import for employers is that yet another level are bureaucracy; of administration; of training and the like, may be necessary to ensure you are protected if the Bill passes into law.

Risk Assessments and Pregnant Employees

Under regulation 3 of the Management of Health & Safety at Work Regulations 1999, employers are under a duty to carry out "suitable and sufficient" assessments of the risks in the work place posed to their employees' health and safety. This duty is further extended in respect of new and expectant mothers by virtue of regulation 16. However, does an employer have to carry out a risk assessment simply because a woman is pregnant or is something more required?

In O'Neill v Buckinghamshire County Council, the Employment Appeal Tribunal has held that there is no general obligation on an employer to carry out risk assessments for pregnant employees. The fact of the pregnancy itself does not automatically entitle an employee to a risk assessment. Three preconditions must be met before the employer falls under a duty to carry out such an assessment;

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

In discharging its obligations to carry out a risk assessment, the employer is not required to meet with the employee concerned. Neither the Pregnant Workers Directive nor the Management of Health and Safety at Work Regulations entitle the employee to such a meeting but the employer must provide the pregnant employee with comprehensive and relevant information on the identified risks to her health and safety.

Once the risks have been identified, the employer is then under a duty to take action to avoid those risks. This can include altering the working conditions or transferring the pregnant employee to another suitable job and may ultimately involve suspending the employee on full pay. Failure to take such action will put the employer at risk of potential Employment Tribunal claims.

One further consideration for employers with pregnant employees must be that where the obligation to carry out a risk assessment arises, and the employer fails to comply with that obligation, then that failure will amount to sex discrimination (Hardman v. Mallon [2002] IRLR 516). The employee is not required to show that she has suffered any detriment in order to be awarded compensation and employers should therefore be astute to carrying out risk assessments where the preconditions are met.

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