



dress codes and employees



Few readers will have missed the publicity over Aishah Azmi who had been suspended from her post as teaching assistant for wearing her veil at work. Yet many employers do not have any guidance about

suitable clothing at work in their staff handbook or employees rules relating to dress.

Rows at work over dress have regularly arisen in the past. In 2003, a Virgin Trains customer services assistant went to court - when his employer requested that he trim his beard to 4 inches - claiming religious discrimination. He lost, as it was found that he and his employer had formerly agreed that he trim his beard to that level. In the latest case Ms Azmi was found not to have been discriminated against but was given £1000 for minor procedural irregularities concerning how her case was handled. Many of our clients have had problems over failure to follow procedures in relation to disciplining or sacking employees. Employers can be liable even if the dismissal itself was fair.

It is always wise to seek legal advice before terminating an employment contract particularly if there is any risk of race, sex, disability, religious or age discrimination. Much depends on the job being done as to what clothing rules an employer can impose. Some require men to wear ties. Others, for health and safety reasons, require staff who handle food to have their hair tied back or to wear a hairnet. Others justifiably have a uniform requirement. Now is a good time to reassess your own dress and other policies at work to ensure they are fully compliant with current legislation including the new age discrimination legislation which has been in force since 1st October.

Before disciplining a member of staff, ensure there are proper grounds to do so and follow not only the procedures in the employment contract but also the legislation. Staff are entitled to a hearing, to have someone present with them and to have a chance to put their case and to appeal.

Having a dress code ensures all employees are treated equally and fairly and that a professional image is portrayed to visitors and clients. However, in some jobs where there is no interface with clients whatsoever, it can be harder to justify a dress code.

Please call us for further information on any employment law issue.

company law changes

Many of our clients are unaware of the duties which directors owe to their company. The new Companies Bill will help businesses understand their duties better and, for the first time, will set out in one place all the duties directors owe to a company.

In addition, companies will no longer be obliged to have a company secretary. One controversial late addition to the Bill relates to disclosure of supplier and customer details but only by public limited companies. It is not yet clear how this provision will apply in practice or even if it will be retained in the final version of the Bill but if it remains in its current form, companies may be required to publish details of suppliers. This could mean that confidential information is available.

The Bill also imposes duties on directors concerning issues in areas such as the welfare of employees, the

community and the environment. There will be an obligation to report on these matters in an annual business review to enable shareholders and others to assess their performances. With the amendment, proposed dealings with suppliers will be added.

A DTI spokesman stressed however that companies would not need to offer information that may jeopardise commercial confidentiality. This is clearly an area to watch closely.

Company law is complex particularly where directors' and their companies' interests may conflict. It is wise to take legal advice under both existing law and these proposed changes when they are in force.

Directors involved in selling the business need to exercise particular caution to ensure they act in the best interests of the company at all times and not their own interests.



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Legal eye

maternity pay changes

Increases to maternity pay have recently been introduced under the Government's Work and Families Act.

The Government says that up to four hundred thousand mothers and their families will benefit each year from the introduction of these new measures. The introduction of 'Keeping in Touch' days will mean (where employers think it is helpful) that mothers, if they agree, would be able to go into work for a few days during their maternity leave to stay in touch with developments at work. This would only be where employers and the mother find the arrangement acceptable, but generally this should help ensure mothers have a smooth return to work when their leave ends.

Since 1st October, statutory maternity pay, maternity allowance and statutory adoption

pay will increase from six months to nine months for babies due on or after 1st April 2007, or adoption placements from that date.

This is the start of the Government's plan to introduce 12 months paid maternity leave. However, the system still remains that it is only for six weeks that mothers are paid 90% of pay. After that rates plummet to levels which, for higher paid workers, means in effect they have to return to work to keep income at previous levels.

In addition, the new regulations:

- double the amount of notice required from one to two months for women wanting to change their return to work dates from maternity leave;
- introduce up to 10 'Keeping in Touch' days to allow mothers to go into work and stay in

touch with developments and training there without bringing their leave to an end or losing out on maternity pay;

- simplify the administration of maternity payments and allow employers to adjust them in line with their normal payroll procedures; and
- extend the eligibility for additional maternity leave to all pregnant employees where births are due on or after 1 April 2007.

As part of these changes, all new mothers will be provided with a new booklet 'Pregnancy and Work - What you Need to Know', which can be shared with their employer so they are each clear about their respective rights and responsibilities to each other.

Employers should study the new rules carefully and if advice is needed, please contact us for further information.

new door to door selling rules

If you use salesmen to market your products to consumers, look out for proposed new rules in this field.

The Government has unveiled plans to give greater protection to consumers from rogue door-to-door salesmen and women.

The plans involve ensuring that consumers who buy at home have access to clearer information on what they are buying, how much it costs in full and what they can do if they change their mind. They will also have the same protection when buying from someone regardless of whether they have been formally invited to their home to give a sales pitch. The changes include:

- Giving consumers the same cancellation and cooling-off rights whether it is a pre-arranged visit or a 'cold calling' visit
- Ensuring all contracts have clear cancellation clauses; and
- Insisting on clearer pricing and more written quotations.

These changes will complement the forthcoming 'Unfair Commercial Practices' Legislation (which the UK is due to implement)

which cracks down on aggressive sales techniques including:

- refusing to leave a consumer's home until the contract is signed;
- preying on elderly peoples fears about their personal security to sell them burglar alarms;
- exploiting a misfortune which may make a person especially vulnerable, such as the death of a partner; and
- falsely claiming consumers will get a better deal if they sign up immediately to prevent them buying elsewhere.

Anyone who employs teams of salesmen will need advice on these areas of law to ensure they are told about the new measures in preparation for when they come into force. If you want any advice from us or a training session for your staff, please contact us for further information.

The following case studies are real examples given by the DTI of the type of scams that will be targeted through the proposed changes: A couple from Bedfordshire aged 78 and 90, when requesting a brochure, were told a representative was in their area and could visit.

They were persuaded to buy a bath costing £8,184 and paid a 25% deposit. They then wanted to cancel the contract but found out that because they had asked for the representative to visit they had no cancellation rights.

A Lancashire couple tried to get a quotation for double-glazing so that they could shop around for the best price. The salesman who called stayed for three hours and finally persuaded the couple to sign a contract. When the couple tried to cancel the next day they were told there would be a 25% cancellation fee as it had been a pre-agreed home visit.

An 80 year old man from Essex tried to cancel a contract for property repairs but was met with a further visit from the sales person who tried to persuade him to change his mind. The man paid a 20% deposit of £793, which he could not get refunded because he had initially responded to an advertisement and thus agreed to a home visit.

These changes may affect your business so contact us if you need any further advice.



selling a business

Many businesses do not recognise the importance (when selling the business) of whether to sell the assets or property of the business or, instead, sell the shares of the company they own.

The legal structure will be very different depending on which route is chosen and tax advice should be sought. The business is likely to have on-going contracts with suppliers and customers that it will need to assign or transfer to the buyer if the assets are sold.

However, if the company is sold as a whole then usually there is no effect on existing agreements as they continue in full force and effect seamlessly as the entity – the company – has not changed. Even in a sale of shares however, the occasional existing commercial contract may include a clause triggering a termination or giving the other party a right to terminate (which they may or may not choose to exercise) where there is a 'change of control'. Businesses do not always read

the small print of their commercial contracts carefully enough, and should always decide if they do wish to accept a clause which provides that the agreement may not be assigned (or transferred) unless consent is obtained from one party.

Other issues to consider on a sale include the position of employees. In most sales of assets and shares, their rights are protected under the regulations known as TUPE 2006 and their contracts should continue without interruption. Some mergers are caught by the UK merger control legislation. If the value of assets acquired is more than £70m or a market share of 25% is created or enhanced, then there is a risk the merger may be referred to the Office of Fair Trading for consideration. It is possible the buyer may be obliged to sell off assets acquired after the transaction is completed. Due to this risk, some buyers make prior formal clearance from the OFT a condition of the sale. Pensions and effects on property and leases are other danger areas where it is sensible to seek specialist advice.

direct marketing – advice for individuals and organisations

Two new pieces of guidance on direct marketing have been released by the Information Commissioner's Office.

'Unwanted marketing' covers individuals' rights in relation to direct marketing, such as unwanted emails, faxes, telephone calls and mailings through the post. These rights fall under the Privacy and Electronic Communications Regulations 2003 and the Data Protection Act 1998.

The guidance sets out the rights of individuals to prevent their personal details being used for direct marketing, the steps an individual can take if they receive marketing they believe may be breaking the law and what companies need to do if they wish to send individuals direct marketing.

The second piece of guidance is with regard to organisations and the Corporate Telephone Preference Service (CTPS). It explains how organisations can register their number on the

CTPS to help them reduce the number of unwanted direct marketing calls they receive and the rules regarding the CTPS for organisations making direct marketing calls. It also outlines the steps organisations can take if they believe that a caller is breaking the law.

If you engage in marketing as part of your business it may be worth taking some legal advice on whether all your practices are fully compliant with all relevant legislation. Please call us for further information.

unfair terms



In October, after action by the Office of Fair Trading, Ryanair agreed to change its contract terms as they were unfair.

The OFT's concerns included:

- Ryanair's liability for damage or delay to sporting equipment, infant equipment, medical/mobility equipment and musical instruments - Ryanair's terms excluded liability for damage or delay to the above items and stated that they were carried on a 'limited release basis' - in other words, at the passenger's own risk. Ryanair has now removed these exclusions of liability from its terms and conditions.
- Ryanair's liability for baggage claims - Ryanair required that if an item of baggage was reported as lost and not found within 21 days, consumers would have to make a further claim within a further 21 days, otherwise Ryanair excluded liability for the lost baggage. Ryanair amend-

ed the terms so that the consumer is not required to make a further claim within the 21 day period, and also removed the requirement that consumers complete a 'Property Irregularity Report' when making a claim for damaged or delayed baggage.

■ Ryanair's liability in the event that flights are delayed or cancelled, or passengers are denied boarding on a flight - the OFT was concerned about the options that Ryanair offered to consumers in these situations, and considered that Ryanair's terms did not reflect consumers' full rights under the relevant EU Regulation. Ryanair has now amended these terms and included a copy of the notice setting out these rights on its website.

If you exclude and limit liability to your customers, you need to take account of the Unfair Terms law. If you supply to consumers, the Unfair Terms in the Consumer Contracts Regulations 1999 may apply and unfair terms will be void. The Government is expected to introduce a new unfair terms bill next year so changes in this field are likely.

legal update

paying your staff

On 1st October the National Minimum Wage rose to £5.35 per hour. Have you ensured all your staff are given the new rates?

It is estimated that about 1.3 million workers will benefit from this. The adult rate of the National Minimum Wage will increase from £5.05 to £5.35 per hour, while the youth rate, paid to 18-21 year-olds, will go up from £4.25 per hour to £4.45. The rate for 16-17 year olds will increase from £3.00 an hour to £3.30 per hour.

When the National Minimum Wage was launched in 1999 the main rate was £3.60 per hour and the 18-21 year-old rate was £3.00 per hour. Since then an estimated one million workers per year have been said to have benefited from it. Some businesses who are keen to ensure their suppliers are compliant with the law require them to confirm all their workers are paid the correct amount.

price fixing and competition law

Price fixing has been hitting the headlines. The competition authorities are investigating allegations made by Virgin that employees of Virgin and BA had discussed prices. A BA executive allegedly told a Virgin member of staff of plans to increase BA's fuel surcharge. Under competition law, tipping off a rival about a price change is illegal. BA said its policy was to conduct its business "in full compliance with all applicable competition laws". Virgin informed the UK's Office of Fair Trading, which is working with the US Department of Justice on the investigation.

In a second case, a UK businessman called Mr Norris is appealing in the UK against an extradition attempt by the US which could result in him serving up to 10 years in an American jail for his alleged involvement in a cartel. These cases show the risks businesses and their staff run when they fix prices with competitors.

In a third case in October, the Court of Appeal looked at price fixing in the market for toys and games and in the supply of replica football kits. This decision was the first case, under the Competition

Sometimes there are difficulties in interpreting the legislation in this field and we are happy to answer any queries you might have on how the sums are calculated and what you need to pay workers. Other issues over paying staff sometimes require legal advice such the complex area of what deductions from pay are permitted by law. Another area of interest is the Working Time Regulations where areas of difficulty include hours of work, opt outs from the 48 hour maximum working week and holiday pay. Pay for part time workers is another difficult area under legislation introduced in this field. Pay is one of the most emotive and important issues for staff so should always be handled with care.

Another issue is confidentiality. Some businesses choose to impose a clause in their employment contracts which states that employees must not tell any other employee what they earn. However, anyone contemplating legal action under equal pay legislation is entitled to ascertain information of this kind. In some workplaces with hourly rates agreed with unions confidentiality is impossible.

Act 1998, of its kind to reach such a high court. The court dismissed in full both Argos' and Littlewoods' appeals against liability for their part in price fixing certain toys and games. It also dismissed in full JJB Sports' appeal against liability for their price fixing conduct in relation to replica football kits. The appeals by Argos, Littlewoods and JJB on the amount of penalties each of them were given by the Competition Appeal Tribunal were also dismissed. Argos is liable for a penalty of £15 million. Littlewoods must pay a penalty of £4.5 million and JJB is liable for a penalty of £6.7 million.

Businesses can benefit from having a competition law compliance programme to train staff to avoid breaching the rules and also a 'dawn raids' policy document so that staff know what to do if the Office of Fair Trading or European Commission arrive to inspect premises to look for evidence of cartels. Now that jail sentences as well as fines of up to 10% of turnover can be imposed for breach of the UK competition rules it is crucial businesses do all they can to avoid infringement.

keeping it secret

Does your business have confidential information such as customer and supplier lists or even secret products and inventions? If so, do you take all proper precautions to ensure the information is properly protected in law?

You may need some or all of the following:

- Standard confidentiality / non-disclosure agreement to be signed by potential suppliers and customers
- Clauses in your contracts with employees and others which protect confidential information
- Restrictive covenants in such contracts drafted carefully to ensure they are enforceable under common law
- Agreements with contractors working on your premises who may be given access to very confidential information
- Appropriate security measures to ensure staff records/files and other business information cannot be accessed by employees other than those who need access to that information
- Instructions to staff such as through an IT policy document which helps them understand IT procedures and other measures which protect the business. Contact us if you would like any of your contracts in this area updated.