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Issue 4 - 2006

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new age discrimination legislation

1st October is D Day for the age discrimination legislation. All readers need to look at their retirement policies.

To start with, most employees in the UK will have a right to keep working to age 65 even if their employment contract specifies 50, 55, 60, 63 or any other age - with a few exceptions such as footballers. Check your contracts now. In addition, even at 65 an employee cannot be shown the door. You have an obligation to go through a special procedure before asking them to go, although the right to force them to leave remains, something which Age Concern is challenging in the courts as age discriminatory.

The new rules do not just apply to older people being discriminated against. Any discrimination against young people will also be banned, although the experience necessary to do a job will still count. Gone are the job ads – age 25 – 30 or those with words such as "young thrusting employees wanted". Even office jokes about the elderly could not only be non-PC but also illegal and could cause an age discrimination case later.

In a country with a huge problem over funding pensions, allowing people to work longer should be enormously beneficial. However, in companies where the old were traditionally moved out to make space for the young, promotion issues may become an issue and log jams may be caused.

Specialist areas like pensions require individual guidance. Please call us for information on how the new rules affect you.

doing business with the USA

The US has been pursuing an aggressive policy of extraditing UK businessmen. Few readers will have missed the extraditions of the so called Enron or NatWest 3 extradited to the US for an alleged UK fraud against a UK bank which they all deny.

The new UK/US extradition Treaty does not require any substantial evidence to be presented before a UK citizen is sent to the US. There simply needs to be a request by the US Government. On such request the UK citizen is extradited to the US for trial where they may well be held in custody for up to 2 years before their trials provided the matter is an offence in the UK too. US citizens up for the same offence would be held on bail. Also the US has not ratified the Extradition treaty, so it does not yet operate on a reciprocal basis.

We have had clients concerned about doing business with the US as a result of this decision. What is clear is that offences committed in the UK can lead to prosecution elsewhere. In a second case, a Mr Ian Norris allegedly involved with a price fixing arrangement is also about to be extradited. When Mr Norris committed the alleged offence it was not an explicit criminal offence in the UK. In another case, the UK has approved the extradition of an alleged UK computer hacker. Other companies are concerned with employees' safety when doing business abroad and large product liability claims in some countries like the US, where huge damages of millions of dollars can be awarded.

Finally a legal UK gambling site which has US customers is in trouble as US citizens under US law are not allowed to engage in on line gambling. The ex boss was arrested in the US on his way to Costa Rica where the company is based and was jailed pending his trial.

Additional concerns include the new proposed UK anti-corruption legislation which may prohibit the giving of bribes, even in countries where it is necessary in practice to transact business. What is clear is that doing business abroad is not without risk and it is wise to take legal advice on how best to protect your position.

Call us for more information on this subject.

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FOIA decision – Derry City Council

The Information Commissioner has ordered Derry City Council to disclose the terms of an agreement between Ryanair and Derry City Airport, ruling that disclosure now will not result in economic, financial or commercial prejudice and thus does not fall within any exemption under the Freedom of Information Act 2000.

The act enables anyone to gain access to information held by a UK public body, of which there are about 100,000 from local councils to the Government with some important exceptions. In this case the Council argued that it did not have to release the information under three exemptions:

- That disclosing it "would, or would be likely to, prejudice" the UK's economic interests or the financial interests of a public authority – in this case the economic interests of the region and the commercial interests of the airport and of Ryanair;
- That it was obtained from a third party (Ryanair) and to disclose the information would be a breach of confidence actionable by that third party or any other person; and
- That to disclose it "would, or would be likely to, prejudice the commercial interests of any person", including the Council itself.

The Council refused to release the details and a complaint was lodged with the Information Commissioner's Office. The ruling is worth reading in full. On confidentiality the IC said he read an email sent on 2nd February 2005 from Ryanair to the Council stating:

"Our contract with Derry Airport is confidential and contains commercially sensitive information. The information should therefore not be disclosed under the FOI Act."

But this showed only Ryanair's view as to confidentiality at the time of the email. It did not create an express duty of confidence.
Nor did the initial non-disclosure provision found in the agreement apply – since the fact that the airline flies out of Derry Airport has been in the public domain since 1999. In fact the Commissioner found nothing in the agreement, or in the correspondence leading up to the agreement, that would create an express duty of non-disclosure on the part of the Council. The confidentiality exemption therefore did not apply. This illustrates the importance of FOIA issues being considered very carefully when contracting with public bodies.

There is also a commercial prejudice exemption but this should be assessed at the time of making the request. Disclosure now of a 1998 Agreement had not been shown to prejudice commercial interests now.
He ordered the Council to release the requested information within 30 days.

If you want access to information held about a business competitor by a public body, perhaps if you are wanting to tender for work with that body, contact us for advice on your rights under the FOIA.

Also if you are supplying confidential information to a public sector body take legal advice on how best to ensure that confidentiality is preserved.

harassment at work

The House of Lords has held that an employer is liable for workplace harassment even if they were not in any way negligent. There may be many more harassment claims now following this change.

The rules used in this case were anti-stalking legislation used here by an NHS employee to hold his employer responsible for a superior's treatment of him. Protection from Harassment Act 1997 does not define harassment, which has enabled courts to permit it to mean tabloid newspaper campaigns and the behaviour of animal rights activists in various cases.

Here the claimant William Majrowski won.
The House of Lords said that the Act covers the behaviour of employees at work even when the employer has not caused or failed to prevent the offending behaviour. Those employers are liable for the acts of employees. Until this decision, an employee had to prove an employer was negligent in not stopping bullying taking place and that it had caused the employee psychological damage. The new decision means that companies can be sued even if the company cannot be expected to have known about the bullying. Majrowski worked for Guy's and St Thomas' NHS Trust in London and claimed that his superior, Sandra Freeman, was rude and abusive to him in front of colleagues. Majrowski, who is gay, claimed that the abuse was fuelled by homophobia.

whistleblowers

Never sack an employee because they blow the whistle. The law protects employees in this position. Always take legal advice first.
In a recent case against Abbey National, the court looked at the law in this field – the Public Interest Disclosure Act. The Court of Appeal said that the Act protected ex-employees as well as current employees and the ex-employee concerned could bring a claim under the Act.

Employers should consider setting up a system whereby an employee with a concern, such as another employee engaging in bribery, price fixing or breach of health and safety law, has some means of raising the matter internally. For example, with the company secretary or a senior director direct, rather than with their boss who may be implicated in the problem. This can help the company concerned manage the issue appropriately but if the employee chooses to notify the authorities then their legal position is protected by the 1998 Act.

If you have any disputes with employees or may be proposing to sack a member of staff it is wise to seek legal advice first.

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Patent Office mediation service for intellectual property disputes

The Patent Office has launched a Mediation Service. There is a general trend that court actions should be settled out of court often by using Alternative Dispute Resolution (ADR).

The service will handle mediation requests as follows:

- ☐ The mediation service will operate as a commercial service and be administered by a Search and Advisory Service (SAS).
- ☐ In litigation cases before the Comptroller, Hearing Officers will advise whether mediation is appropriate on an individual case basis.
- ☐ A written notice will be sent to the parties inviting them to consider mediation as an alternative to litigation.
- ☐ Litigation proceedings will be stayed for 14 days for the parties to consider mediation.
- ☐ If both parties agree to mediate, litigation proceedings will remain stayed until the outcome of the mediation is determined.
- ☐ Parties will be free to appoint their own mediator.
- ☐ Parties may choose to appoint a Patent Office mediator; if so, all arrangements will be dealt with by the Search and Advisory Service.
- ☐ Litigation proceedings will recommence if no mediation settlement is reached or the parties do not agree to mediate.
- ☐ The Patent Office plans to charge a total cost of £1000 (plus VAT) for a full day mediation service at their London Office, and £750 (plus VAT) at the Newport Office. For a half day mediation service the planned charges are £750 (plus VAT) and £500 (plus VAT) respectively. An accommodation only package at either venue is also available at a cost of £100 (plus VAT) per half day.
- ☐ All costs will be divided equally between the parties involved.

all change for wills and trusts

The Finance Act 2006 became law this summer with some wideranging changes. Most tax professionals have advised their clients to wait until now to look at their wills and trusts as the proposed changes, which were set out in The Budget, were subject to amendment before they became law. The changes mean that some trusts are subject to more tax than before, but are not as extensive as originally feared.

If you have an existing life interest or accumulation and maintenance trust, this should be reviewed before the 6th April 2008 transitional period ends. You may need to review this earlier if one of those benefiting comes into their life interest before that date. If your will contains a trust (as many do) that should be looked at by experts in this area to see if any changes are needed.

New trusts can be subject to the new taxes. If you are likely to be putting into trust more than the nil rate band amount for inheritance tax (IHT) then you may be affected by the changes. Many people put their life insurance policies into trust for their spouse or children when they die to avoid inheritance tax on the policy proceeds. Existing policies are mostly unaffected by the new Act but it is sensible to have them checked and also take advice if setting up a new trust for a life insurance product.

Major changes are made by the Act into how accumulation and maintenance trusts (A&M trusts) and life interest and 'interest in possession' trusts are taxed. There used to be no immediate IHT charge on such trusts when they were set up but now with certain exemptions, they are treated in the same way that discretionary trusts previously were handled. From 22nd March 2006 an upfront IHT charge is payable at 20% of the amount the donor puts in over the nil rate band and a further 20% charged if the donor dies within 7 years. There will also be IHT payable every 10 years at 6% of the value of the trust assets. For existing A&M trusts there will be no new IHT charge provided the children benefit by age 18. Many trusts currently provide for 25 years by which age children tend to be more responsible. The Government has said there will be favourable treatment for ages up to 25 but not a total escape from IHT as was the case before the Act came into force. There is a period to 6th April 2008 to change current such trusts but please contact us for expert advice.

property traps

Many of our clients take out commercial leases for business premises without taking legal advice. This is usually not sensible. It is important to know in detail what the obligations are that you are taking on, to what uses you can put the premises and what the minimum length of the term of the lease is. Also you may need to look into what happens if you want to terminate the lease early or transfer the assets of your business to someone else.

These problems are not just in the commercial field. Many people buy a house together. Indeed new registers are being set up on the internet for unrelated people wanting to buy (but without all the cash they need) to club together with others to do so. Others buy with a sibling or their partner. It is always wise to have a written agreement in these cases and to hold the property as tenants in common, not joint tenants so that the percentage shares are clear and legally enforceable and so that on death the share owned by one person can be left by them in their will to their chosen beneficiaries rather than automatically going to the other co-owner or owners. Sometimes there are unequal contributions towards the mortgage or the deposit which again makes it wiser to have a written agreement and to make the percentages held clear in law.

For those simply buying or selling their home the conveyancing process involves lots of useful checks for your benefit such as searches and questions asked of the seller. We can advise you on areas to watch and potential pitfalls with any proposed property acquisition. If you need any legal advice on property law do not hesitate to get in touch with us.

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legal update

Ofcom's plans

The telecoms regulator Ofcom is concerned the UK is again running out of telephone numbers. Londoners have had to cope with moving from 01 up to 020 7 / 020 8 which has led to many shop and other signs needing to be changed over the years. The main proposals are:

- The introduction of a new '03' nation-wide number range.
  This would be provided for organisations requiring a national presence, but which do not require the revenue sharing functions provided by '08' numbers and which would be charged at the same rate as calling a geographic number.
  The intention is to create a business number range, the pricing of which can be easily understood, and thus to encourage consumer trust;

- The creation of a new '06' number range for personal numbering services. This would replace the current '070' prefixes, which are frequently confused with mobile numbers;

- Simplification of the '08' range. To ease pressure on these number ranges, OFCOM wants prefixes organised on a two digit (e.g. '082') rather than three digit (e.g. '0845') basis, to increase the numbers available by a factor of 10. Additionally, ranges would be allocated to services in order of price to equate the prefix used with the rate charged to the caller (i.e. '080' will be free, '082' will cost less than '089' and so on);

- A similar rationalisation, for consumer clarity, of the '09' range to equate particular prefixes with particular services, e.g. '098' for adult, '092' for charity; and

- Consideration to be given to charging for number allocation on '01' and '02' ranges, and the allocation of smaller blocks of numbers, to incentivise efficient number use. OFCOM is only proposing this in relation to oversubscribed number areas, and it anticipates that this will only be required for 5 years. Ultimately, pressures on numbers will ease with the introduction of services such as telephone calls via the internet.

Gambling Act 2005 and gaming ads

The Department for Culture Media and Sport (DCMS) and the Gambling Commission have recently published joint guidance on how they consider the Gaming Act 1968 applies to advertisements for remote gaming, after concerns that some recent non-broadcast ads were illegal. The Gaming Act 1968 applies to gaming advertising until the Gambling Act 2005 comes fully into force in September 2007. It includes material that is classified as an advertisement and is displayed on the Internet, for example websites, pop-ups, banners, hyperlinks, text messages and e-mails.

The guidance makes clear that ads by overseas remote gaming operators are allowed only to "inform" the public of their facilities. The Gaming Act prohibits gambling ads from "inviting" the public to subscribe money for gaming and the guidance states that prohibition extends to ads by overseas operators. "Invite" is defined as any inducement, enticement or encouragement to gamble. Offering someone a bonus or benefit for taking part in gaming or submitting money for use in gaming is considered a form of invitation. An ad, for example, that offers £150 to new players would be considered to breach the Act.

The guidance includes lists of phrases that would fall foul of the prohibition on "inviting", for example "play poker everyday" and "play online anytime". Even some factual statements could be construed as an invitation to gamble, for example "daily jackpots". Finally, the guidance makes very clear that criminal liability under the Act will extend to British-based media owners that publish an illegal ad, particularly because the Act cannot be enforced against advertisers established outside the British jurisdiction. Contact us for further information.

fixed-term contracts

Since July, important changes to the law on employees hired under a fixed term contract came into effect.

The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (the "Regulations") provide that an employee who has been employed continuously under a fixed-term contract (or a number of successive fixed-term contracts) for four or more years, (from 10 July 2002 when the legislation came out), will become a permanent employee. This has the effect that from 10th July employees on fixed-term contracts may become permanent members of staff.

Some employers can justify objectively the use of fixed-term contracts at the date the contract was entered into, or last renewed and avoid the permanent status. There is no guidance in the Regulations on what may constitute an 'objective justification', but it looks like employers will have to show that there is a very real need to keep employees as fixed term and denying permanent status is proportionate.

Local businesses need not be too worried as fixed term employees have similar rights to permanent employees under those regulations.

Please contact us for information.