

Pay and Employment Rights Service Newsletter

Oct 11



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Are you sociable enough?

The use of social media such as internet platforms, tweeting and blogging, is growing, thereby transforming communication and business techniques. However this raises a number of issues, see previous editions (Apr 09 & Jul 11). In addition some reports claim misuse of such media costs the UK economy billions every year.

In response to this ACAS has published a new guide covering security, acceptable behaviour, business objectives, communication and consultation, see <http://www.acas.org.uk/index.aspx?articleid=3381>.

PERS model policies, such as, Private Telephone and Computer Use, Discipline, Grievance and Data Protection also address these issues, see www.pers.org.uk.

Cutting red tape, the perennial promise

Unnecessary red tape annoys us all but despite promises by many governments it seems to grow each year. But this year, the government, through its 'Red Tape Challenge', is attempting to change that in 6 areas including employment law. Consultation continues but some new measures have already been announced.

Two, with the stated aim of allowing organisations to focus on growth, are to reduce Employment Tribunal (ET) claims. Firstly there will be a charge for making an ET claim. The hope is to reduce "vexations" claims and move the cost burden from the tax payer to the claimant. But will it? Unless legal help is available, surely this will mainly affect the lower paid and unfairly dismissed, which is unjust.

Secondly, the length of service employees require before being able to claim unfair dismissal (UFD) will double to 2 years from April 2012. Some reports allege this will have a disproportionate affect on women who have higher job turnover rates. Indeed in 1999 the longer period was found to be justifiable, indirect sex discrimination by the House of Lords. Even so, reducing the qualifying period to 1 year was one of the first pieces of employment legislation introduced by Tony Blair's new government. So what has changed?

The aim is to give employers confidence to hire new staff. But will employers really take on more staff and if so for how long? 1 year 51 weeks? Would they use a 'fair' procedure? See 'How fair is fair?' on p 3. Also, as many ET claims are linked to discrimination where there is no qualifying period, any reduction in claims may not be significant. Note, there is no service requirement for many other types of ET claim, see, PERS leaflet "Contracts" on www.pers.org.uk.

If you want to tell the government what you think should be scrapped and what kept, log onto www.redtapechallenge.co.uk.

Business Link Closure

Following a government review on the way it offers support services to businesses, Business Link's regional advisory offices are closing on 25th November 2011. They have largely been replaced by their web site, www.businesslink.gov.uk, which it claims is 'simple to use, up to date and practical'. As well as a lot of employment information the web site also has a number of online tools, such as an employment status indicator and calculators for maternity, additional paternity pay etc.

Note, employment support is available from the PERS **telephone advice line** on 01924 428030. It is open Mon & Fri 10 -1pm, Tues, Wed & Thurs 10 – 4pm and Tues evening 5.30 – 7.30pm.



CLS Quality Mark

PERS has been successful in being awarded the prestigious Community Legal Service Quality Mark. This means that PERS meets the standards required by the CLS for providing general help in telephone services and case work in Employment.

Training

- 27th Oct** **Managing Conflict, Leeds**
- 10th Nov** **Written Statement/
Essential HR documentation,
Bradford**
- 23rd Nov** **Data Protection, Leeds**
- 1st Dec** **Supervision and appraisal, Kirklees**
- 7th Dec** **Redundancy, Bradford**

Training Needs Analysis

Do you have a specific training need?

Please complete our survey at

<http://www.smart-survey.co.uk/v.asp?i=42215djslc>

and we will incorporate your needs in our next programme.

Hot topics from the Advice Line

In this new section I will highlight a recurring topic from our advice line. This month we have had a number of calls about fixed term contracts – contracts which terminate on either a specified date, or completion of a task or occurrence of an event.

Are staff on fixed term contracts entitled to redundancy pay at the end of their contract?

Yes, if they have over 2 years' service. Therefore there are redundancy liabilities that have to be taken into account in reserves policies. Further, these have to be comparable to payments made to permanent employees unless that difference can be justified.

If extra funding is secured for an employee on a fixed term contract, do they have to be offered the job?

Yes, if the employee has over one year's service they are entitled to be offered suitable alternative work in a redundancy situation.

For details of all rights of workers on Fixed Term contracts see PERS Factsheet, Rights for Workers – Fixed Term Contracts on www.pers.org.uk. Other factsheets in the "Publications" section focus on rights for Carers, Young People and Parents.

Booking:
admin@pers.org.uk
Enquiries:
Tel: 01924 428030

Just giving code

**Send a text to 70070
PERS361 £amount
to donate by text**

Editor's Poll

Last quarter 12.5% of you stated you or someone you knew had had problems at work because of the content of their social networking page. This compares with the 41% quoted in the on line recruitment firm Monster's commissioned research.

This month I'd like to know if you think increasing the service requirement before being able to claim unfair dismissal to 2 years (page 1) will increase employment?

Let me know on anne@pers.org.uk or on line at www.pers.org.uk

www.pers.org.uk

Home working evaluation

A recent evaluation of the PERS West Yorkshire Homeworking Unit gave a positive review.

Lancaster consulting independently evaluated the project to date (2 years on with one to go). They found 313 people had benefited from the program, 46 of whom were successfully running a business from home such as: beauty therapy, IT support, jewellery retail, cake decorating, catering, massage etc.

The project team had made excellent progress against all milestones and feedback from participants was exceptionally positive, praising service quality and 1 - 2 - 1 support.

Abad Ghani, the project co-ordinator said "The businesses that have been set up to date, with the help of the team, are inspiring others to do like wise or become more active in the community." He added: "We cannot over estimate the need for this project throughout Kirklees and a new application has been submitted to the Big Lottery Fund for continuation funding for another three years".

How fair is fair?

In this section we look at recent case law on one topic. This quarter we focus on 'fair' disciplinary procedures.

In a recent match, Carlos Tevez, a striker with Manchester City Football Club (MCFC) allegedly refused to play when requested to do so by his manager.

A footballer's contract is not unlike an employment contract, and will have similar implied terms, such as fidelity and obeying reasonable instructions. Other terms, such as salary will be explicit, i.e. written in the contract itself.

Reasonable instructions

Many job descriptions not only list the tasks an employee has to do in return for a wage but also often have the caveat "and any other duties as requested by management". An employer can thus make practical demands of an employee and any employee not following these is likely to face disciplinary action with potential sanctions up to dismissal.

MCFC suspended Tevez while they investigated the incident. Following this Tevez was invited to a disciplinary hearing, where he had the right to be accompanied by the club captain or a member of the Professional Football Association (PFA). The disciplinary panel found misconduct, but on a lesser charge and fined him four weeks' wages, which was later cut and warned him about future conduct. He has the right of appeal to the club Board. This procedure mirrors the ACAS Code of Practice - Discipline and Grievance Procedures, except the captain/ PFA member replace a colleague/ Trade Union representative respectively, see www.acas.org.uk.

Tevez is now claiming defamation, which he may win as MCFC reduced the severity of the allegations. This stresses the need for confidentiality. Also in all disciplinary cases a thorough investigation of all the factors as well as acting reasonably are paramount for a fair procedure. But beware: an apparent 'fair' dismissal can be rendered 'unfair' by a poor procedure.

In a recent case two kitchen staff were dismissed for taking drinks from the hotel bar without paying for them. As this was a clear breach of the rules an Employment Tribunal found the employer's action justified, but the dismissal was unfair because a) the investigating officer was present at the disciplinary hearing and b) the person who took the decision to dismiss was not – both procedural irregularities. However, the ET ruled that had the correct procedure been followed in the first place the dismissals would have been fair and so reduced the employees' award. This was further reduced at Employment Appeal Tribunal (EAT) to 100%, so the employees gained nothing from their endeavours.

Equity

Equity is also taken into account when considering if a dismissal is fair. This means treating all employees the same under similar circumstances.

In an illustrative case an organisation asked employees to accept a 5% pay cut instead of redundancies. One employee refused and was subsequently dismissed for 'some other substantial reason' (SOSR). He claimed unfair dismissal. The EAT rejecting the claim stated that an organisation does not have 'to be desperate' to impose less favourable conditions and a business facing trading difficulties was entitled to seek means to reduce costs.

It concluded that this does not give management a unilateral opportunity to slash employees' terms and conditions; cuts that fall disproportionately on one sector of the workforce and not another, such as management, may be challengeable on the grounds of 'equity'. As above, the dismissal had to be procedurally 'fair'; here, that involved meaningful consultation.

Issues at work?

Phone our employment
advice team

on

01924 428030

Legal Update

Employment law is updated twice each year, on 1st April and 1st October. This month is rather unusual with fewer statutes coming into force than usual. Here we outline both the new rights of agency workers or “temps” and the annual increase in National Minimum Wage terms.

Agency Workers Regulations

These give agency workers two types of rights:

“**Day 1 rights**” – to be informed of any relevant vacancies in the hirer’s organisation and to access any communal services and facilities, such as canteen, crèche, toilets or showers, staff room, prayer room food and drinks machines and car parking but not those with a waiting list. The hirer can provide this information in an induction pack or via the agency along with other data about the assignment.

“**12 week rights**” – to be entitled to basic terms and conditions equivalent to those they would have received if they were an employee of the hirer. Those terms are pay, working time, night work, rest periods, rest breaks, annual leave and paid time off for ante natal appointments. Pay includes basic pay, payments for overtime and shift/unsocial hours, holiday pay, bonuses or commission rates and vouchers such as child care. It does not include a long list of occupational payments such as sickness, maternity, etc.

All workers, including agency workers, are entitled to certain rights which include: paid annual leave, rest breaks and limits on working time, National Minimum Wage, not to have unlawful deductions from their wages, not to suffer discrimination and a safe working environment.

Contact PERS for further information on this and all other aspects of employment law.

National Minimum Wage

The rates have increased as follows:

- Adults age 21 years and over: **£6.08** per hour (from £5.93).
- 18 – 20 year olds: **£4.98** (from £4.92).
- 16 -17 year olds: **£3.68** (from £3.64).
- apprentices under 19 within the first 12 months of employment: **£2.60** per hour.
- amount per day deducted for provided accommodation: **£4.73** (from £4.61)

