



EMPLOYMENT ISSUES UPDATE.

December 2008

Issue No 55

PARK CITY CHRISTMAS OPENING HOURS

The Park City office will be closing at 5.00pm on Christmas Eve, 24 December 2008 and will not reopen again until 08.45am on **Monday 5 January 2009**.

Over the Christmas and New Year holiday period all clients are reminded to use the Out of Hours Emergency Number (0870 770 7725) if they require urgent advice.

We would like to wish all our clients and newsletter readers a very Happy Christmas and a Prosperous New Year!

FORTHCOMING CHANGES TO DISPUTE RESOLUTION REGULATIONS

The Employment Act 2002 (Dispute Resolution) Regulations came into force on 1 October 2004. The regulations were introduced to reduce employment tribunal claims and put in place minimum statutory procedures for dealing with dismissals (including redundancy, terminating fixed term contracts and capability), disciplinary action and grievances in the workplace.

The regulations have failed to achieve their objectives. Tribunal claims have in fact increased significantly, putting employers and the tribunal system under increasing strain.

A full review of the regulations has taken place. The recommendations of the Gibbons Report 2007 will abolish the Dispute Resolution Regulations. In their place will be the Employment Bill 2007 and a new ACAS Code of Practice which has been drafted and has been going through a period of consultation.

In reality reasonable employers with sound procedures are not expected to need to make changes. The principles remain the same as they have always been i.e.:

- issues should be dealt with promptly
- meetings and decisions should not be unreasonably delayed
- employers should act consistently
- appropriate investigations should be made, to establish the facts of the case
- the employee should be informed of the basis of the problem and have an opportunity to put their case in response before any decisions are made

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It is expected that the Code will bring an increased focus on early informal resolution of workplace disputes and the use of mediation will be viewed favourably and is an effective tool for re establishing working relationships. Park City can assist with workplace mediation for further information, please contact your HR Consultant.

The new arrangements have not yet been approved so it is **essential that all clients continue to follow existing procedures** until the Employment Bill and ACAS Code of Practice are approved and take effect. The earliest that we may expect to see the change is April 2009.

It is essential that formal processes are managed effectively and are procedurally correct. Your consultant can support these processes in accordance with your Company Handbook via the telephone/email helpline. We will keep you advised of the developments in this area and ensure that your documentation is updated as necessary.

Liz Rushmer Chartered MCIPD
Human Resources Consultant

THE MYTH: Children are banned from throwing snowballs

THE REALITY: Every year we hear inaccurate stories about children who aren't allowed to throw snowballs and swimmers who can't take their traditional winter dip in the local lake. All this in the name of health and safety.



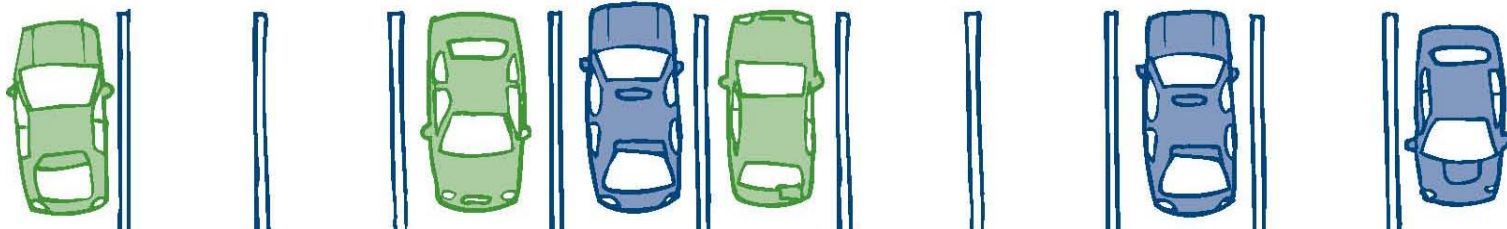
If we spend time on the trivial risks there's a chance we'll miss the most important ones.

We need to focus on finding ways for things to happen, not reasons to stop them – a sensible approach to managing risk focuses on practical action to tackle risks that cause real harm and suffering.

Source: HSE

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Ever wished you could park your worries?



HEALTH AND SAFETY OFFENCES ACT 2008

New legislation, the Health and Safety Offences Act 2008, which will increase penalties and provide courts with greater sentencing powers for those who flout health and safety legislation, is to come into force in January 2009.

The Act amends Section 33 of the Health and Safety at Work Act (HASAWA) 1974 which relates to offences and raises and amends the maximum penalties available to the courts in respect of certain health and safety offences.

The new maximum penalties that can be imposed for breaching health and safety regulations in Magistrates Courts have increased from £5,000 to £20,000, while fines in Crown Courts are still theoretically unlimited.

The range of offences for which an individual can be imprisoned has also been broadened, making most offences imprisonable, up to a maximum of two years. As an example of the new powers, magistrates and judges can now imprison individuals convicted under Sections 7, 8 or 37 of the HASAWA, which cover breaches by individual directors and employees, this was not an option available to them previously. It was generally accepted that the level of fines for some health and safety offences were too low and the introduction of the act will ensure that sentences can now be more easily set at a level to deter all businesses and individuals that do not take their health and safety management responsibilities seriously.

It should also be noted that this new piece of legislation is in addition to the Corporate Manslaughter and Corporate Homicide Act 2007, for which the penalties include imprisonment for a maximum of 5 years, unlimited fines, remedial orders and publicity orders.

A remedial order will require a company or organisation to take steps to remedy any management failure that led to a death and the courts can also impose an order requiring the company or organisation to publicise that it has been convicted of the offence, giving the details, the amount of any fine imposed and the terms of any remedial order made.

In view of the above pieces of legislation, we strongly recommend that you review your risk assessments, safe systems of work, internal policies and procedures and ensure the findings of any health and safety audits and inspections have been actioned. For further help, advice or assistance on this or any other health and safety related issue contact our Health & Safety team on 01206 752100.

Ashley Williams
Health & Safety Consultant

THE PROBLEM WITH GRIEVANCES . . .

Not only do employers have to take considerable care to ensure that they are following the steps laid down in the statutory grievance procedures when faced with an employee complaint, but care must be taken when determining what constitutes a grievance.

Recent case law will give employers reason for caution in situations where an employee raises a concern in writing but states that they do not want it to be treated as a formal complaint. In the case of Procek vs Oakford Farms, the employee did exactly this reserving the right to raise a formal grievance at a later time. However, the employee progressed an application to Tribunal without taking that formal step. Whilst the Tribunal did not uphold the case because the employee had not followed the formal procedure, the Employment Appeal Tribunal overturned the decision on the basis that the first (informal) letter was sufficient to fulfil the requirements of a step one grievance letter.

Whilst we continue to live with the statutory Dispute Regulations in the current format, it is important to take care when considering what is sufficient to fulfil the description of a grievance. Any complaint in writing should set alarm bells ringing whether this be in the format of a formal letter, a letter from a representative (including a solicitor), comments on an appraisal form, an email, notes on an exit interview form or in a resignation letter etc. In some cases verbal complaints may also warrant investigation.

Park City can assist with regard to any such situation and advise accordingly.

Sandra Hull Chartered FCIPD
Assistant HR Operations Manager

CHANGES TO PRINTED CORRESPONDENCE FROM PARK CITY

With effect from December 2008, in an effort to reduce waste, our carbon footprint and overall costs, we will be issuing, where possible, letters and documents via email, rather than hard copy through the postal system. Please speak to your Consultant if you have any queries or concerns regarding these new arrangements.

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Advice?

For further information on implementing these changes in Employment Law and Health and Safety legislation make a little space for Park City now. Call us today on 01206 752100.

Free Business Health-Check?

Would you like a Human Resources or Health and Safety check free of charge for your business? Call now on 01206 752100.



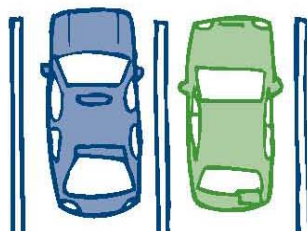
We park your worries. You drive your business.



Park City are experts in all areas of Human Resource Management. For the brochure of your choice, call us now.

- Employment Issues
- Health and Safety
- Tailored Training

IMPORTANT: This document is only intended as a general statement of the new law and does not constitute legal advice. No action should be taken in reliance upon it without our specific legal advice.
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