

Business News

The newsletter for Business & Commercial Clients of **hodgehalsall** Autumn 2008 Issue no.2

Is the customer always right?

From 6th April 2008 employers may be vulnerable to claims for compensation from employees if they knowingly fail to protect them from repeated sexual harassment by a third party. If staff are harassed by customers they can sue their boss.

Section 6 of the Sex Discrimination Act 1975 has been amended with the result that an employer will now be treated as liable where a third party subjects an employee to harassment in the course of his/her employment and where the employer has failed to take such steps as would have been reasonably practicable to prevent such harassment. The employer must have known that the employee had been harassed on at least two previous occasions by a third party although it need not have been by the same third party.



The new legislation may actually provide employees with less protection than they had previously enjoyed as a result of a decision of the Employment Appeal Tribunal in 1997 in which two hotel waitresses had successfully brought claims of

race and sex discrimination against the hotel for whom they worked after being the subject of sexist and racist jokes by Bernard Manning as they went about their work during the dinner at which he was performing. The hotel, aware of Manning's reputation, had taken no steps to protect the waitresses from the offensive nature of the routine and were held liable for discrimination by subjecting the waitresses to an environment where sexual and racial harassment occurred. The employers were therefore held responsible for a one off incident of third party harassment whereas the new law provides that there must have been a minimum of three such incidents.

Employers should ensure that customers and clients are made aware that any harassment of their staff is unacceptable.

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Welcome to Hodge Halsall's Latest Newsletter For Business & Commercial Clients

This Newsletter is designed to summarize various areas of law that may impact upon your business. It is a periodic publication of Hodge Halsall LLP and is intended for general guidance only. It is not to be construed as a substitute for legal advice. For advice specific to your circumstances please contact Hodge Halsall.

We are interested in your opinion. If you have any suggestions about how we can improve Business News or if you would like us to cover a specific topic please contact: Derek Alman at derekalman@hhlegal.co.uk or call 01704 531991.

For further information on any of the articles in this Newsletter please contact Mark Robinson (markrobinson@hhlegal.co.uk) or Judith Bond (judithbond@hhlegal.co.uk) or call 01704 531991

Covenants to Repair



A recent decision of the High Court (*Carmel Southend v Strachan and Henshaw* [2007]) has provided further useful guidance as to what is expected from tenants covenanting to keep premises "...in good and substantial repair and condition...".

A Landlord claimed damages for complete replacement of a roof on the grounds that patch repairs were pointless as the roof had a history of leaking and such repairs would have caused incidental damage to other areas of the roof. The tenant argued that its responsibility should be limited to patch repairs and the court agreed. The Judge provided guidance to assist in determining the extent of a tenant's obligation to return premises in "good and substantial repair and condition" as follows :-

- the obligation does not require

a tenant to put the property into perfect repair or pristine condition;

- the standard of repair required is that of any intending occupier "who judges repair reasonably by reference to his intended use of the premises";
- an obligation to keep a property in good and substantial repair and condition is different and more extensive than an obligation simply to repair;
- if there is more than one method of repair, each of which complies with the required standard, it is up to the tenant to make the choice even if one method costs less;
- if the options are replacement or repair (both of which meet the standard) replacement will only be required if repair is neither reasonable nor sensible.

Cycle to Work Scheme

Cycling is increasingly recognised as an efficient, non-polluting, low greenhouse gas emitting, quiet and low cost form of transportation. With this in mind and in order to promote the health benefit of cycling as a form of exercise the 1999 Finance Act introduced an annual tax exemption allowing employers to loan cycles and safety equipment for cyclists to employees as a form of tax-free benefit. Essentially, it allows an employer to buy a cycle and cyclists safety equipment, reclaim the VAT, make use of capital allowances and loan the cycle to an employee for qualifying journeys to work. A further scheme allows an employer who wishes to recover the cost of providing the cycle and safety equipment loaned to the employee to do so by way of a salary sacrifice arrangement. As petrol prices soar this is a scheme which may merit further employer investigation.

For full details of the scheme see the Department for Transport website.

www.dft.gov.uk



Firms breaching fire safety rules face closure



The Lancashire Fire and Rescue Service has closed 32 business premises in Blackpool and issued 379 Enforcement Notices in the town highlighting faults which must be rectified. New Fire Safety Regulations came into effect in October 2006 which apply to all non-domestic premises, including the common parts of blocks of flats

or houses in multiple occupation and the action taken in Lancashire clearly shows that the new Regulations are not being taken seriously by businesses. The law will apply to anybody who is :-

- responsible for business premises;
- an employer or self employed with business premises;

- responsible for a part of a dwelling where that part is solely used for business purposes;
- a charity or voluntary organization;
- a contractor with a degree of control over any premises.

The person responsible must carry out a fire safety risk assessment and implement and maintain a fire management plan.

For information about the Regulations and guidance on completing a fire risk assessment see :-

www.communities.gov.uk/fire/firesafety/.

When does RIDDOR apply?

Employers have a legal obligation under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) to report certain work place incidents to the Health & Safety Executive including :-

- **deaths**
- **major injuries** – including fractures (other than to fingers or toes), temporary or permanent loss of sight and any injury leading to unconsciousness or requiring admission to hospital for more than twenty four hours;
- **over three day injuries** – any injury which results in a worker being away from work or unable to perform their full range of normal duties for more than three days.
- **near misses** - any incident

which could have resulted in a major injury such as the collapse of a scaffold over five metres high.

- **specified diseases** – including certain poisonings, occupational dermatitis, occupational asthma, tuberculosis and hand arm vibration syndrome.

A record of any RIDDOR event must be kept either in paper form or electronically and must include the date and method by which it was reported to HSE; the date, time and place of the incident; personal details of those involved; and a brief summary of the events.

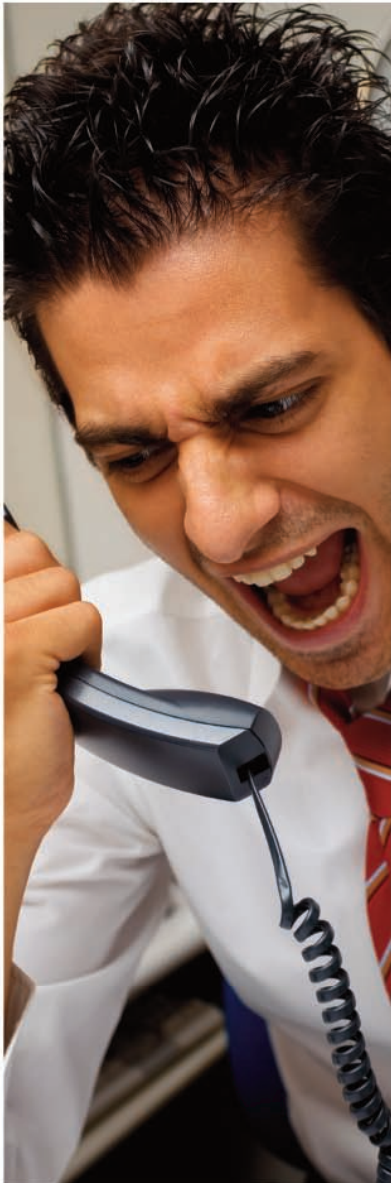
For further information go to www.hse.gov.uk/riddor

Non-disclosure to an insurer

A fire occurred at premises where the sprinkler system had stopped working some time before. The owners of the premises had not notified the insurers about the failure of the sprinkler system and the High Court held that this amounted to a failure to notify a material change of circumstances and resulted in the insurer not having to pay out to the occupiers under the policy.

It is essential to remember that there is an ongoing obligation to disclose any material change of an insured risk to the insurer.

Don't look back in anger



Pressure is part and parcel of work and inevitably in such an environment heated exchanges between staff and management can arise. In the "heat of the moment" words are often exchanged which may have serious longer term consequences. An upset employee may resign and/or walk out leaving the employer with a decision to make. An employer on the receiving end of words said in haste may respond by immediately sacking the employee. It can be dangerous to treat the employment as at an end in such circumstances because an employee may later claim unfair dismissal. Words used on either side may be ambiguous and as observed recently by a judge said "...without much thought to the legal implications or the niceties of legal analysis".

When an employee resigns after a heated exchange employers

should :-

- not automatically assume that the resignation is effective
- allow the employee to "cool off"
- after a short interval make contact with the employee to see whether they really meant to resign
- if contact proves impossible begin formal termination procedures and invite the employee to a meeting to discuss matters.

If a claim for unfair dismissal does arise out of such a situation an Employment Tribunal will consider what a reasonable bystander would have considered any ambiguous words to have really meant. When taken out of context some months later an employer may find it difficult to justify dismissal and/or a refusal to take back an employee who resigns in such circumstances.

Trading disclosure - limited companies

The Department for Business Enterprise and Regulatory Reform has published up to date information about trading information that a company is required to disclose. Companies are reminded that all business letters (to include email), order forms and websites must include

details of :-

- the registered name of the company
- the place of registration (e.g. England)
- the registered number
- the address of the registered office
- if exempt from having "limited" as part of the company name

disclosure must include the fact that it is a limited company.

Non-compliance is an offence for which a fine of up to £1,000 can be imposed.

For further details see www.berr.gov.uk

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