Swine Flu -Managing widespread sickness in the workplace

With swine flu having been declared a pandemic businesses need to start to prepare for the worst with a view to having contingency plans in place to minimise the effects on the business of any such pandemic.

Due consideration should be given to :-

- preparing a list of the transferable skills of each employee to enable thought to be given to redeployment in the event of a significantly reduced workforce;
- allowing employees to work more flexibly to reflect the likelihood of their having to care for sick relatives or for children whose schools have closed;
- making provision for staff to work from home and ensuring that suitable internet connections exist for that purpose;
- giving consideration to keeping lines of communication open between staff and/or customers or clients by identification of key points of contact;
- reducing face to face meetings by utilization of teleconferencing, webcams or email;
- ensuring a robust health and safety policy exists to ensure that all staff do everything possible to prevent the spread of swine flu by, for example,
  - always carrying tissues
  - using clean tissues to cover the mouth and nose when sneezing
  - binning tissues after one use
  - washing hands regularly with soap and hot water or a sanitizer gel.
  - emailing all employees the NHS leaflet on swine flu available on the Directgov website
  - considering disciplinary measures for staff who fail to follow basic health and safety measures

Businesses should be seeking to put contingency plans in place to minimise the effects of a swine flu outbreak. Further details on swine flu can be found at www.direct.gov.uk/swineflu

A foot in the door

A survey undertaken by Careerbuilder.com in the US reveals that jobseekers are using unusual approaches in an endeavour to get the attention of potential employers including in one case sending a shoe together with a CV in an effort to get a "foot in the door". Other job candidates were said to have tried the following unconventional methods :-

- handing out CVs at traffic lights
- washing cars in a company car park
- handing out personalized coffee cups
- sending a cake designed as a business card with the jobseekers picture

A spokesman for CareerBuilder cautioned

"while unusual job search antics may attract the attention of hiring Managers, they need to be done with care and professionalism so that candidates are remembered for the right reasons".

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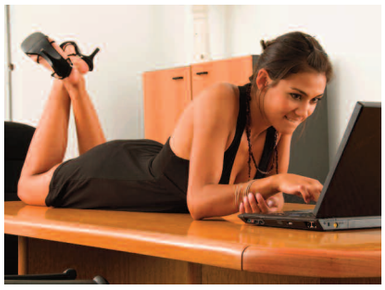
Business News

The newsletter for Business & Commercial Clients of hodgehalsall Autumn 2009 Issue no.4



Can an expired warning be used when making a decision to dismiss?

Most solicitors familiar with employment law will advise employers to take extreme care when considering using an expired disciplinary warning in justifying a decision to dismiss.

A recent decision of the Court of Appeal, however, held that if an employer took an expired warning into account it would not necessarily make a dismissal unfair.

The employee had been given a final written warning for misuse of the employer's premises and equipment and the misuse of company time – he had been washing his car during working hours. Some three weeks after expiry of the warning the employee and four other members of staff were found watching TV during working hours. The employee was dismissed for gross misconduct with his dismissal letter giving the reason for dismissal as being "…found watching television during company time…". No reference was made to previous misconduct. The four other employees were not, however, dismissed but given written warnings. The employer decided that as the other employees had good disciplinary records they were entitled to receive a lesser penalty. The Court of Appeal upheld the employer's decision to dismiss emphasizing that no unequal treatment of the employees had taken place because "…they were all treated the same; none of them were dismissed for a first offence of misconduct. It was the first misconduct of the four employees who were not dismissed but received the lesser penalty of a final warning. In the case of …the dismissed employee… it was repeated misconduct, for which he was then dismissed, having received a lesser penalty of a final warning on the previous occasion".

The decision should be considered on its facts and not viewed by employers as providing an opportunity to automatically take expired warnings into account. The conduct in question should justify dismissal on its own irrespective of whether or not an expired warning exists and the court made it clear that there would have to be exceptional circumstances for the dismissal to be found fair where there has been reliance on an expired warning.

On a practical level employers should consider amending disciplinary procedures to allow warnings to be used after their expiry in appropriate circumstances.

Airbus UK Limited v Webb 2008.

Inside this issue

Welcome to Hodge Halsall's Newsletter For Business and 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 legal guidance only. It is not to be construed as a substitute for legal advice. For advice specific to your circumstances please contact your Hodge Halsall representative.

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.

Retirement age challenge rejected

A case which challenged compulsory retirement at 65 was rejected by the High Court in September 2009. Employers are still, therefore, able to compel workers to retire at age 65 without a redundancy payment even where they might prefer to carry on working. Age UK had argued that the default retirement age of 65 introduced by the Government in 2006 was unlawful as it failed to comply with the EU Directive against age discrimination. The Government responded that the Directive on Equal Treatment in employment allowed member states to operate differences in treatment on the grounds of age if they could be objectively and reasonably justified by a legitimate aim.

Following the decision, Andrew Harrop, Head of Public Policy at Age UK commented :- "Today's ruling does not spell the end of our campaign to win justice for older workers. In fact, we will be stepping up our fight to get this outdated legislation off the statute book".

False self-employment in the Construction Industry

HM Revenue & Customs published a consultation document in July 2009 identifying proposals to make sweeping changes to the taxation of self-employed workers in the construction industry. Under the controversial proposals, workers who purport to be self employed, but who, in fact, perform their work in the same or a similar fashion to an employee of the client, will be treated as employees for tax purposes unless the worker provides :-

- his own plant and equipment beyond normal "tools of the trade"
- his own materials needed to complete the work
- other workers to carry out the work and where he is responsible for paying them.

The purpose of the proposed scheme appears to be to generate additional tax revenue although the Government has suggested that any scheme will not be brought into effect until the construction industry is in a "stronger position".

Companies Act 2006 - Revised AGM requirements for private companies

The Companies Act 1985 required every private company to hold an annual general meeting each calendar year within fifteen months of the previous AGM unless a special resolution to dispense with the requirement had been passed.

Subject to the Articles of the company, the Companies Act 2006 removes the requirement to hold an AGM without the need to pass a special resolution. If, however, the Articles of a private company contain express provision for the holding of an AGM, the requirement is retained. Any indirect reference in the Articles can be ignored and the Department of Business Innovation and Skills have confirmed that provision within the Articles for directors to resign at an AGM will not be interpreted as a requirement for an AGM to actually be held. Interpretation of such a provision in the Articles is, however, unclear but the favoured view is that a director will be treated as having retired on the last day upon which an AGM for the relevant year could have validly taken place.

Farm Rights of Way

A Judge sitting at Blackpool County Court recently awarded damages to a dog walker who successfully sued a farmer for injuries suffered when she was attacked by a herd of cows as she was crossing a field belonging to the farmer with her dog on an unmarked footpath. The farmer was held to be responsible for having failed to take steps to avoid the risk to the walker, either by removing the cows to a different field, or by fencing off the footpath. Although the walker had strayed from the route of the designated footpath, the farmer's argument that she was trespassing as a result was dismissed because he had allowed the footpath to become overgrown with nettles and had not prevented other walkers from altering their route around the nettles.

The decision highlights both the liability that can be imposed upon farmers in such circumstances and the danger that herds of cattle can present. In June 2009 a dog walker on the Pennine Way was trampled to death by cows who were with their calves and who were panicked by the two dogs that the walker had with her. Members of the public should clearly not enter fields with dogs where there are calves or other young animals.

Shirley McKaskie v John Cameron 2009

Reclassification of holiday as sick leave

The European Court of Justice (ECJ) has recently ruled that if an employee is ill whilst on holiday he is entitled to additional holiday to compensate after having recovered.

The case considered by the ECJ involved an employee who suffered an accident at work about two weeks before he was due to start a months annual leave. He was effectively signed off work due to the injury suffered for six weeks and he requested that his employer allow him to take his holiday on different dates. That request was rejected. The ECJ decided that he should have been allowed to take his holiday at another time and to carry the

holiday forward into the next leave year if necessary. The ruling confirmed that if a "….worker does not wish to take annual leave during a period of sick leave annual leave must be granted to him for a different period".

It seems likely that the decision will cover an employee who becomes ill both before or during the actual holiday period.

Commentary on the decision has been negative with concern expressed that it could leave the door open to abuse by some employees who may seek to increase their holiday entitlement by alleging that they were sick whilst on holiday and asking to be reallocated holiday to cover the alleged period of sick leave. Employers may find this issue difficult to monitor.

Pereda v Madrid Movilidad 2009 ECJ