

Business News

The newsletter for Business & Commercial Clients of **hodgehalsall** Autumn 2010 Issue no.6

The perils of the office party



With Christmas approaching and the office party season getting into full swing, how concerned should employers be about finding themselves responsible for an employee's behaviour at a social event? Can an employer be liable for drunkenness, harassment and fighting by staff when the party is organized out of hours and away from office premises?

Christmas parties are likely to be seen as "work activities" and improper conduct remains the responsibility of the employer. An embarrassing moment for an individual employee may have far more serious and expensive consequences for those running the business if a complaint is made by an offended employee.

Other employment issues must also be considered.

- Are the premises chosen for the party accessible to all staff as, if not, a claim by a disabled employee may follow.
- If an invitation goes out to the employee's "other half", does it include those of the same sex – as a failure to do so may be unlawful and in breach of equality laws.
- Have employees on maternity leave been invited to prevent an allegation of sex discrimination?
- Are soft drinks available to avoid offending staff whose religious beliefs prohibit them from drinking alcohol?

The key to avoiding problems is to plan ahead. Ensure that sound and up to date policies and procedures are in place that address sexual harassment, discrimination and work place bullying. Provide a firm reminder to staff that work-place standards continue to apply over the Christmas period. Ensure that the chosen venue is suitable taking into account employer's health and safety and equality obligations. A little careful thought by employers can prevent a visit to the Employment Tribunal in the New Year.

For specialist legal advice on all employment law matters please contact Mark Robinson (markrobinson@hhlegal.co.uk) on 01704 531991.

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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.

Tenancy Deposit Scheme

Under the Housing Act 2004 a landlord must join a Tenancy Deposit Scheme (TDS) where a deposit is paid by a tenant on the creation of a new residential Assured Shorthold Tenancy. The initial requirements of the TDS must be complied with by the landlord within fourteen days from the date of receipt of the deposit from the tenant who must also be given certain prescribed information within the same timescale. If the requirements of a TDS are not met the landlord can be prevented from recovering possession of the property and if a court is satisfied that the initial requirements have not been complied with the court must order the landlord to pay the tenant a sum of money equal to three times the amount of the deposit. What if the Landlord has protected the deposit or given



the prescribed information but after the fourteen day limit? A recent decision of the Court of Appeal considered this issue where a tenant applied to the court for the landlord to pay the penalty of three times the amount of the deposit. The court decided, however, that compliance by the landlord even

when late would furnish a complete defence to any such claim by the tenant. A strict interpretation of the Act should be applied to such a penal provision. The purpose of the legislation had been to protect deposits paid by tenants rather than punishing landlords who might be a few days late. The date of the court hearing was held to be the cut off date for compliance by the landlord. If, however, a landlord were to protect the deposit only after commencement of court proceedings but before the hearing although the claim of the tenant would fail the landlord would ordinarily have to pay the tenant's costs.

For specialist legal advice on all Landlord & Tenant issues please contact Judith Bond (judithbond@hhlegal.co.uk) on 01704 531991.



Can a contract be formed by e-mail?

The movie magnate Samuel Goldwyn famously described an oral contract as "not worth the paper it's written on". The difficulty with an oral contract is the lack of evidence to show what was apparently agreed between the parties. A more modern take on the issue of what constitutes a contract can arise where terms are agreed by email. Is there then a legally binding contract? In the recent case of *Grant v Bragg* [2009] Mr G and Mr B each had a 50% shareholding and were directors of a company. A shareholders agreement existed containing a provision that if either was unable to work for six months due to

illness that person would sell his shares to the other. Mr G became ill and discussions began about the sale of his shares to Mr B. A draft agreement was drawn up which was considered by both and changes were made but no formal agreement was ever signed. G later issued proceedings trying to force a sale which B defended arguing that as the draft agreement had not been signed there was no binding contract. The court looked at the correspondence which had passed between the parties including an exchange of emails. The Court of Appeal decided that no binding contract was in existence because

the correspondence/e-mails indicated that a formal agreement had to be signed before it would bind the parties. Had the draft agreement not been prepared it is possible that the court may have reached a different decision. The case emphasizes the need to ensure that correspondence and e-mail exchanges should be marked as "subject to contract".

If you require legal advice on any contractual disputes or commercial agreements please contact Mark Robinson (markrobinson@hhlegal.co.uk) on 01704 531991.



Employees must have “reasonable opportunity” to read dismissal letters

Employees informed by post that they have been dismissed must have a “reasonable opportunity” to read their dismissal letters, the Supreme Court has ruled.

Lauren Barratt, who worked for a charity for the homeless, was suspended from work after allegations that she “behaved inappropriately” at a private party. At the end of a disciplinary hearing she was told she would be informed of the outcome by letter which would arrive two days later.

Before the letter arrived Ms Barratt went to London to help

her sister with her new born baby. Four days later, after her return from London, Ms Barratt opened the letter and found she had been dismissed for misconduct.

She lodged a claim for unfair dismissal and sex discrimination at the employment tribunal two days before the 3 month deadline for claims expired. Her employers argued that she had missed the deadline because her effective date of termination was the date the letter arrived and not the date she read the letter.

The Supreme Court confirmed previous case law by rejecting the Charity’s argument and stating that the effective date of termination was when the employee had actually read the letter, or at least had a reasonable opportunity of reading it, and knew of the decision.

Lord Kerr, in delivering the

judgement of the Supreme Court, said “to concentrate exclusively on what is practically feasible may compromise the concept of what can realistically be expected. The prospect of summary dismissal for gross misconduct is a fairly unenviable one. That she should wish to read the letter in which that prospect materialised is not in the least surprising. If it contained details of the findings made against her, it is entirely to be expected that, at least in the first instance, she would wish to absorb these alone.”

Employers considering disciplinary action should seek legal advice. Please contact Mark Robinson (markrobinson@hhlegal.co.uk) on 01704 531991 for specialist advice on all employment matters.

Default Retirement Age



Until the introduction of the Age Discrimination Regulations in 2006 an employer was able to impose a retirement age for employees in the contract of employment. When the Regulations came into effect a Default Retirement Age (DRA) of 65 and a statutory retirement

procedure requiring employees to retire at or after that age was introduced. The Government is now intending to remove the DRA by phasing it out from April 2011.

The main proposals are :-

- Retirements under the DRA will cease completely with effect from 1st October 2011 and no new notices of intended retirement may be issued after 6th April 2011
- Retirement dismissals will still be permissible after 1st October 2011 but only if objectively justified.

- The procedural requirements applicable to a retirement dismissal will be abolished.

The intention of the Government is that no employer imposed retirement age will exist after 1st October 2011 and employees should be able to continue to work until they choose to retire. An employer will be entitled to dismiss an employee over the age of 65 only for the same reasons that any other employee could be dismissed and in which event a reasonable and fair procedure must be followed.



The Equality Act 2010

Most of the provisions of the Equality Act came into force on 1st October 2010. Claims brought regarding acts occurring (or continuing to occur) on or after that date will fall under the Act. The Act brings together the various discrimination grounds within one piece of legislation and identifies nine "protected characteristics" that are designed to be protected from discrimination: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

The Act maintains the two principal forms of discrimination: direct and indirect but these concepts have slightly different definitions:

- Direct discrimination – person A discriminates against B if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. The words "because of" have replaced the previous wording "on the grounds of".
- Indirect discrimination – person A discriminates against B if A applies to B a provision, criterion or practice that is discriminatory regarding a relevant protected characteristic of B's.

The Act contains a concept of "objective justification" mirroring that contained in much of the existing discrimination law i.e. "a proportionate means of achieving a legitimate aim". The concept of objective justification applies to indirect discrimination in respect of any of the protected characteristics, but to direct discrimination in respect of age only.

The main difference introduced by the Act's definition of objective justification will relate to claims of disability discrimination. Under the Disability Discrimination Act, an employer could justify less favourable treatment for a reason related to the Claimant's disability where the reason was "material and substantial". There is a concern that the Act may have introduced a more difficult hurdle for an employer to overcome but even under the previous material and substantial test an employer still had a duty to make reasonable adjustments which often resulted in the employer facing similar issues.

The Act enables Tribunals before whom claims are brought to make recommendations that benefit the entire work force such as introducing an equal opportunities policy or ensuring an harassment policy is

more efficiently implemented. Failure to implement such a recommendation could be used as evidence to indicate discrimination in subsequent claims against the same employer.

The Act also allows dual discrimination claims. Previously a Tribunal had to consider each ground of discrimination separately (such as sex or race) and could not, for example, determine that an individual was being discriminated against on the combined ground of being a "Pakistani woman". The impact on women as a group and on a woman's ethnic group generally had to be considered separately. The new rules do permit dual discrimination claims but only on the grounds of two protected characteristics. It is arguable that a claim based on dual characteristics actually increases the Claimant's prospect of a successful claim in comparison with those under the previous single strand discrimination laws.

For legal advice on all issues relating to discrimination in employment matters please contact Mark Robinson (markrobinson@hhlegal.co.uk) on 01704 531991.

Directors residential addresses no longer revealed by Companies House

Company Directors were previously able to apply to have their home addresses hidden from the Companies House register only where they were able to show that a serious risk of violence or intimidation existed if the information was freely available to the public. It is, however, now possible to register a "service address" with Companies House in addition to a director's residential address. Only the service address will generally be

available to the public with limited rights of access to the residential address given to some public authorities and credit reference agencies. Residential addresses of existing directors will still be public although the provisions to have the information hidden if they feel they are at risk of violence remains. There is a fee of £140.00 payable to Companies House for applying to have an address removed from the public record. New directors should ensure that

any address provided as a service address will allow them to receive correspondence posted to that address as notices sent by Companies House to directors are often important and require urgent attention.

For legal advice on all Company law matters please contact Paul Leadsom (paulleadsom@hhlegal.co.uk) on 01704 531991.

We use the word 'Partner' to refer to a member of the LLP. Hodge Halsall LLP registered Office: 18 Houghton Street, Southport, Merseyside PR9 0PA Tel: 01704 531991. Also at: 565 Liverpool Road, Ainsdale, Southport PR8 3LU Tel: 01704 577171. Partners: Mark P Robinson, Judith Bond & Gordon Hatton. Hodge Halsall LLP is a Limited Liability Partnership registered by the Solicitors Regulation Authority. registered No. OC328351

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