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NEWSLETTER

APRIL 2006

In this month's newsletter we cover, Harassment and Bullying is Costly, Employment Legislation changes in April, Transfer of Undertakings, and recent employment tribunal cases.

HARASSMENT AND BULLYING IS COSTLY

An employment tribunal has recently awarded a waitress **£124,000** after she was harassed by a chef at an exclusive Mayfair club in London. The tribunal chairman found that the atmosphere in the kitchen was heavy with sexual overtones towards the waitress with whom he sought to establish a sexual relationship. It was also said that the chef in question was a bully. The waitress' claims of sex discrimination and unfair dismissal were upheld by the employment appeal tribunal.

Employers are increasingly introducing a policy into the workplace in a bid to prevent harassment and bullying occurring and any subsequent claims. However, a policy is only the start. Employers must:

- Know the employment legislation that applies to bullying and harassment.
- Know the signs and symptoms of a person or persons being bullied and harassed.
- Know the behaviours of an harasser and / or bully.
- Know the effects of harassment and bullying on an employee and the company.
- Act on evidence indicating harassment and / or bullying immediately. Condoning such behaviour is not acceptable.
- Deal with any grievances immediately and conduct a thorough investigation.
- Train and educate employees on what is acceptable and what is not acceptable behaviour.
- Train managers on how to deal with harassment and bullying cases.

Further documentation on How to Manage Harassment and Bullying can be purchased from [LYNC HR Ltd](#) together with a Harassment and Bullying Policy

Alternatively email lcreasey@blueyonder.co.uk to request your copy of How to Manage Harassment and Bullying and/or Harassment and Bullying Policy at the introductory price of £55 each +vat.

Employment Legislation Changes due in April 2006

2nd April - Statutory maternity, paternity and adoption pay are increased to £108.85 per week.

6th April - Statutory sickness pay increases to £70.05 per week.

6th April - Working Time (Amendments) Regulations 2006 - workers whose working time was partly measured or determined by the worker is no longer exempt from the maximum working week.

6th April - Transfer of Undertakings (Protection of Employment) Regulations 2006 - See the section below dedicated to this legislation.

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TRANSFER OF UNDERTAKINGS

The Transfer of Undertakings (Protection of Employment) Regulations 1981 are tightened up on April 6th and become the Transfer of Undertakings (Protection of Employment) Regulations 2006. They will cover:

- Contracting out, contracting in and re-tendering. (Single events, short term services and activities are not covered by the legislation).
- The work that the employees carry out transfers.
- Changes to terms and conditions of employment related to the employees transferring can only be made where the principle reason is economic, technical or organisational (ETO) or in certain insolvency situations where representatives have agreed to the variations.
- Harmonising terms and conditions of transferring employees with existing employees is not allowable. There is no time limit related to this.

- Dismissing an employee directly related to the transfer or for a reason connected to it, except if for an ETO reason, will automatically be unfair.
- Changes to working conditions as a result of the transfer are not allowable. There is no time limit on this.
- The transferor (current employer) must provide certain information to the transferee about the transferring employees.
- Warranties and indemnities must be included in the transfer agreement, as both parties must inform and consult employees about the transfer.

The new regulations no longer require the need to determine if the entity being transferred is asset reliant or labour intensive.
Further documentation on How to Manage TUPE can be purchased from:
[LYNC HR Ltd](#)

EMPLOYMENT TRIBUNAL FINDINGS

• **Dike versus Rickmand and Other - References**

Mr Dike was offered a job subject to a satisfactory reference. His previous employer provided a reference which included Mr Dike was "a very difficult person with whom to work. We shall not be sorry to lose his services." The new employer withdrew the offer of employment and Dike sued his previous employer for breach of contract and negligence.

The employment tribunal found that the statements in the reference were true. Incidents were identified and supported the statements.

The case highlights the importance of documenting what is fair, accurate and truthful even if it is not welcome by the past employee. Employers must however be aware that if the employee is not aware that they have performed or behaved below the required standard during their employment any reference highlighting this could potentially be unfair and result in employment tribunal claims for discrimination, breach of contract, etc.

Further information can be obtained in [How to Manage Leavers](#) from [LYNC HR](#)

Employment Tribunal Findings Cont:

Arnold Clark Automobiles Ltd versus Stewart (1) Barnetts Motor Group Ltd (2) - Grievance raised via a solicitors letter

This case highlights the difficulties that employers face regarding employee grievances. Employers must now act on any letter from an employee or their

representative and seek to deal with the contents as if it were a grievance even though the word grievance is not used.

Stewart was employed as general manager at Barnetts Motor Group which was sold to Arnold Clark Automobiles who proposed to employ a different General Manager. Stewart was not consulted and he resigned. His solicitor wrote to Arnold Clark Automobiles stating that Stewart's contract of employment had been breached along with other potential claims. The claims were refuted and Stewart took the matter to the tribunal. The tribunal firstly had to consider whether the solicitor's letter was a grievance (if not, no claim could have been made as a result of the Dispute Resolution Regulations which came into force in October 2004.

The tribunal found that the solicitors letter was a grievance note. Arnold Clark Automobiles appealed to the Employment Appeal Tribunal. The tribunal said the letter was a grievance, it did not have to use the word grievance, could be sent by the employee's solicitor and any use of the words "without prejudice" would not prevent it from being a grievance.

Additionally, in **Cooke versus Secure Move Property Services Ltd** Cooke resigned the day before a disciplinary hearing and claimed constructive dismissal. Cooke was being investigated for allegations of gross misconduct and had written to her employer (Secure Move Property Services Ltd) expressing concerns that the investigations were biased. This letter the tribunal decided was a grievance and should have been handled as such.

LYNC HR's recommendations:

- If you receive a letter from an employee or their representative, or an employee complains verbally about any issue you must treat the situation as a grievance and proceed to implement the 3 step grievance procedure.
- If complaints are made in a resignation letter deal with them through the usual grievance procedure.

This newsletter is sent to you by-monthly and includes useful information about employment legislation changes and top tips on an employment subject in a concise form. Further advice must be sought before any subsequent action is taken. The information published is without responsibility on our part for loss occasioned to any person acting or refraining from action as a result of information published herein. We welcome your feedback and views so please feel free to email us at lcreasey@blueyonder.co.uk

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