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Employment Law

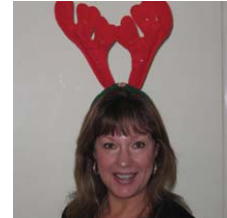
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Newsletter

News update for
HR Specialists



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Social Networking Sites

Social networking sites are hugely popular, with Facebook now being the 12th most popular website in the world. Users claim that these sites help them to share their lives with friends and strangers, via messages, photos, videos and music.

A third of internet users access the web from work. Many employers have now put a complete block on the use of sites such as Facebook and MySpace because employees were spending too much time on them. There is no law which prevents employers from banning the use of social networking sites at work. There is software in existence which can restrict access to certain websites and allow employers to monitor the amount of time that employees spend on the web, and the sites which they visit. Employers should, however, inform employees that their web usage may be monitored, otherwise they may be breaching privacy rights. We do know, thanks to an ECJ decision that emails and internet use at work are covered by Article 8 of the Human Rights Act 1998, (*"Everyone has the right to respect for his private and family life, his home and his correspondence."*) The trend towards more mobile and remote working,

greatly facilitated by the use of laptops, PDAs and Blackberry devices continues to blur the distinction between personal and working lives.

Employers may be vulnerable if they are not explicit about how they monitor personal information about their staff. A balance has to be struck between the employer's right to know and the employee's expectation of a measure of privacy at work.

Employees should also be made aware that any information gathered about them is held and processed in line with data protection legislation. It isn't necessary for employers to develop new policies in respect of social networking, but they do need to keep on top of social developments. Employers should also ensure that they use appropriate procedures to deal with web misuse.

New Discrimination?

Flame haired Ms Primmer's successful tribunal case attracted much media attention, (*Primmer v Mayflower Kebabs Ltd.*) Her claim was based on sex discrimination, but much of the harassment she endured focused on the

colour of her hair. Her sex was the reason she was harassed, and the fact that her hair was ginger was incidental, even though it was this aspect of her appearance which the bullies targeted.

In much the same way, fattism is becoming a workplace issue. There is no specific legislation to protect overweight employees from discrimination at work. There have been recent reports from recruitment specialists that there is some resistance by employers to recruit significantly overweight applicants, usually owing to presuppositions. However, as we have seen from the *Primmer* case, it is possible for an employee to build a successful case, even though the most obvious reason for harassment is not, at first blush, covered by current statutes.

Employers have a duty of care to protect the health and safety of their workforce. Employees, who suffer a course of harassment, could have claims under the Protection of Harassment Act 1997. The lesson we should learn is that any issues of discrimination or bullying will require investigation, even where there doesn't seem to be an obvious statutory peg on which the employee can hang their claim.

(On the subject of discrimination, a recent EAT case has judged Rastafarianism a religious belief. There had been previous academic debate about whether Rastafarianism so qualified. Rastafarians are not protected under race discrimination legislation, as they do not qualify as an 'ethnic group'.)

Extensions to family friendly rights delayed until 2010

HMRC has announced that, in order to give employers some clarity and further time to make their preparations, significant extensions to existing rights to maternity, paternity and adoption leave and pay will not come into force until April 2010, at the earliest. These changes had originally been planned for April 2009. The exact

implementation date has not yet been decided, but HMRC has confirmed that the Government still intends to introduce the changes by the end of this Parliament.

Since 1st October 2006, the statutory entitlement to paid maternity and adoption leave is 39 weeks. Fathers are entitled to take two weeks' paid paternity leave. The Work and Families Act 2006 allows for paid maternity and adoption leave to be extended to 52 weeks. In addition, it introduces a new right of up to 26 weeks' paid additional paternity leave (APL) if the mother has returned to work and has not used her full entitlement to paid maternity leave. The new APL regime is intended to be brought into force at the same time as the increase in paid maternity leave. Details of how this regime will be operated and administered are still being worked out.

This is our last newsletter of 2007. We wish all our readers a joyous festive season, and a prosperous new year!

This newsletter does not contain legal advice. Whilst every effort is made to ensure its accuracy, Spearing Waite and the authors of this newsletter do not assume for, and cannot be held liable in respect of, the correctness of its contents, or for any reliance placed upon them.

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