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Newsletter

News update for HR Specialists

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The Companies Act 2006 & Confidentiality Orders

The Companies Act 2006, which comes into force in stages during 2007 and 2008 introduces a number of changes that will affect both the directors and the shareholders of limited companies.

From October 2008, it will no longer be necessary for a private company to have a company secretary. At the same time, there will be a new minimum age for directors of 16 years.

From 1st October 2009, the traditional rules regarding the register of directors will continue, but directors will have the right to set out a service address rather than their actual address. A service address may be stated to be the company's registered office. This is clearly so as to provide directors a chance of preserving the sanctity of their homes, families and their own sanity against the activities of extremist groups. However, from this date, the insertion of a service address rather than a director's home address will only apply to future documents. It will not remove the director's name from historic records.

The Criminal Justice and Police Act 2001 inserted a clause into the Companies Act 1985, which permits directors to apply to the Secretary of State for a confidentiality order where there is a serious risk that the director or anyone living with him will be subject to violence or intimidation. A confidentiality order provides for the director's home address to be removed from historic documents. It would seem that this facility will be repealed when the new provisions come into force. Therefore, if a director wishes to have his/her address removed from historic documents at Companies House registers, s/he should apply now, before that facility disappears.

If this is something which you think we could help with, please don't hesitate to call us.

Social Networking & Blogging

We have received a number of 'phone calls, seeking advice on how to deal with employees who are spending a disproportionate amount of time on social networking sites such as Facebook. To reiterate, employers are perfectly entitled to prevent employees using office equipment and internet connections for personal use. Alternatively, employers may place restrictions on the type of site to which employees have access on company computers, so that while news sites, for example, are freely accessible, Facebook, MySpace etc are not.

Some employers are prepared to allow staff to update their blog or visit social networking sites on office computers but only outside normal working hours or during breaks. It is strongly advisable for employers in this category to set out a clear formal policy on internet usage. Employers who place no formal restriction on employees' access to

such sites are more likely to encounter difficulties when seeking to dismiss employees who exploit the privilege. Discipline and dismissal will not necessarily be unreasonable in the absence of such a policy, but having a clear policy and procedures in place will reduce the risk of unfairness in such proceedings. You will not want to become engaged in factual disputes as to whether the employee was blogging or networking to such an extent that job performance was significantly impaired.

If you wish to draft a policy specifically on this topic, you should include the following:

- If employees are allowed personal internet usage, the policy should make clear the extent of any such permission and any restrictions on time. Use could be restricted to break times and before and after work but not at any time which would interfere with the performance of the individual's duties. The policy should also specify that disciplinary action will be taken in cases of misuse or abuse of the privilege.

- The policy should spell out the potential consequences of defaming the employer or otherwise damaging its reputation in material published online or breach of confidentiality.

- Point out that work email addresses should not be used when registering on such sites.

- Make clear to employees the nature, extent and reasons for monitoring internet and email usage.

HMRC v Annabels

In *The Commissioners for Her Majesty's Revenue and Customs v (1) Annabels (Berkeley Square) Limited (2) George (Mount Street) Limited (3) Harry's Bar Limited UKEAT/0562/07* the EAT held that tips and service charges distributed between workers had not been "paid by the employer" when they had been paid from troncmasters' bank accounts. Accordingly, they could not be included in calculations to determine whether the workers had been paid the national minimum wage.

Following the EAT's decision, HMRC issued a news release confirming that employers will have to ensure that they pay workers at least the NMW regardless of any tips, gratuities, service or cover charges, as long as these are not paid by the employer directly through the employer's payroll.

This may lead employers to change administrative arrangements to ensure that they retain tips and service charges before distribution to workers. Following suggestions that employers were failing to distribute tips to their workers or that they were using them to ensure workers received the NMW, the Government intended to review the manner in which employers treated tips. It, therefore, appears that the use of tips and service charges will be subject to further scrutiny.

The Employment Bill proposes to introduce:

- Changes to the method of calculating arrears of the NMW.

- Penalty payments for employers who fail to pay the NMW.

- New inspection powers for NMW compliance officers.

- Strengthening the criminal offences under the NMWA 1998.

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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