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Human Resources & Health and Safety

June 2011



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your legal and contractual
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Employment Law Update

Flexible Working Regulations

In our last edition in March 2011, we stated that the Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2010 would come into force on 6 April 2011, increasing the child age limit from under 17 to 18. However since then the government have confirmed that they will be thoroughly reviewing employment regulations for their effect on small businesses and have subsequently decided to not go ahead with the change to the Flexible Working Regulations. Therefore the child age limit remains at 'under 17' or, in the case of disabled children, 18 years.

Consultation on Immigration Reforms

On 9 June 2011 the government launched a consultation on reforms to the points-based immigration system. The consultation will end on 9 September 2011. Further information is available on the UK Border Agency's website; <http://www.ukba.homeoffice.gov.uk>

Consultation on Flexible Working and Parental Leave

On 16 May 2011 the government launched a consultation on Flexible Working and a new system of Flexible Parental Leave which.

The consultation into flexible working will consider extending this right to 'all' employees and replacing the existing 'statutory' process for considering requests for flexible working, to a new 'duty' to consider requests reasonably. There will also be a new accompanying statutory code of practice to provide guidance for employers.

The government are also proposing a new system of parental leave and pay, available to mothers and fathers, to replace maternity leave and pay after the child is 18 weeks old. It is proposed that maternity leave and pay and ordinary paternity leave will remain for the first 18 weeks after which parental and additional parental leave and pay will apply. The current right to additional paternity leave will be replaced. The consultation will end on 8 August 2011. Further information is available on the Government Modern Workplaces website; <http://www.bis.gov.uk/Consultations/modern-workplaces>

The Bribery Act 2010

The Bribery Act 2010 will come into force on 1 July 2011. In line with the Act, bribery is defined as

the 'giving or taking of a reward in return for acting dishonestly and/or in breach of the law' by people working on behalf of a business both in the UK and abroad.

There are four possible offences under the Act; bribing another person, being bribed, bribing a foreign public official or failing to prevent bribery.

Bribing another person is defined as 'the offering, promising or giving of a reward to induce a person to perform a relevant function or activity improperly'. The key here is whether something has been undertaken in order to encourage another person to behave improperly. The government guidance includes an example which would not be seen as a bribe because the intention was not to induce improper behaviour. The example given is inviting clients to attend a Six Nations match at Twickenham to cement good relations.

Being bribed is defined as 'accepting of, agreeing to accept or requesting of a reward in return for performing a relevant function or activity improperly'. 'Relevant function' includes any activity of a public nature or any activity connected to the organisation.

Bribing a foreign public official is defined as 'trying to influence a foreign public official with the intention of obtaining or retaining business in a situation where the public official was not permitted or required by law to be influenced'. Sometimes, the government will allow those tendering for a public contract to offer some form of additional investment in the local economy or to do something which would benefit the local community. If relevant written law permits this then would not be seen as a bribe. However, if relevant written law did not permit this and the foreign public official benefited from the investment, this may be seen as a bribe.

Failing to prevent bribery; this is the 'corporate offence' which organisations will need to pay closer attention to. Under the Act a corporate offence could occur as a result of the activities of any employee, consultant or agent – if they were involved in accepting or receiving a bribe which resulted in the organisation gaining or retaining business. An offence of this kind could result in an unlimited fine for the organisation and directors could face unlimited fines and/or receive a prison sentence of up to 10 years.

A defence against such an allegation would require the organisation to demonstrate that it had adequate procedures in place to stop any bribery occurring.

So what do you need to do?

1. Ensure that you are fully committed to preventing bribery within your organisation by anyone associated with the organisation. You need to promote and instil a culture where bribery is seen as unacceptable by everyone, from the top down. Think about how you will communicate this to anyone associated with the organisation and lead by example.
2. Assess the risk that bribery poses to your organisation. How exposed is your organisation, either internally or externally, to risks of bribery. You will need to ensure you document your assessment of the risks.
3. Check your procedures and ensure they prevent bribery by anyone who is associated with the organisation. Your procedures should set out a 'common sense approach' and be 'proportionate' to the risk involved and clear, easily accessible, effectively communicated, implemented and enforced.
4. Train (where necessary) employees to ensure individuals are aware of how to address situations where bribery might occur.
5. Monitor and review your organisations activities and progress in line with your procedures.

For clarification of any of the above updates or for advice and guidance on any HR and/or Health and Safety Concerns contact us by emailing ehedley@hasslefreehr.co.uk or by calling 02476 670381 or 07817880943.

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