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proactive business advice

## HR Update - Summer 2012

As the summer's sporting events kick off we take a look at how they could impact on your business. We also look at a recent tribunal case study, and examine the Beecroft Report.



### Best practice - running a business during this summer of sports

First we had Euro 2012, then Wimbledon then of course it's the Olympics. We are all aware of these events, but have you taken the time to consider how they may affect your business?

A lot of your employees will want to watch these events and this may affect attendance formally through official requests for leave or perhaps unofficial absence and sickness. You will need to manage this and ensure that it has a minimal impact on your business. Below are a few suggestions that may be of help:

#### 1. Be flexible.

- Consider flexible hours for your staff during the period. For example, they could agree to work 'core hours' during

the day, but choose to start or finish earlier so that they are able to watch their chosen event.

- If it's practical to do so, encourage your staff to swap shifts.
  - Allow those staff less interested in the events to work overtime (or to accrue time off in lieu) to cover the absence of their colleagues.
2. Consider how you could ensure that your staff are able to watch key events whilst at work by offering special screening on your premises (but do ensure you have a TV License for this).
  3. Consider how increased traffic as a result of the events may impact staff attendance and time keeping. This again means that it may be worth allowing a measure of flexibility in the start and finish time for some employees and even the opportunity to work from home.

4. Whilst being as flexible as possible, make sure that staff are clear on the process for taking time off and that they are aware of the consequences of taking time off without prior authorisation.

You will need to monitor the situation on an ongoing basis. Also see it as a positive opportunity for learning more about your staff and their interests.

### Fact – useful information

The Sunday Trading (London Olympic Games and Paralympic Games) Bill has now received Royal Assent. The Act suspends restrictions on large shops' Sunday trading hours for eight weeks from 22 July to 9 September 2012 during the London Olympic and Paralympic Games.

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## Case Study - Illegal worker had no right to bring discrimination claim

The Employment Appeal Tribunal (EAT) demonstrated how tough tribunals can be in the recent case of *Allen v Houna*.

This was a tragic case of abuse and exploitation demonstrating the very strict operation of the law applicable to illegality of contract. The claimant was a Nigerian who came to work in the UK as a domestic servant. On the employer's instigation, the claimant obtained a Nigerian passport in their family name and falsely suggested in her visa application that she was a relative of theirs visiting for a holiday. She then intentionally overstayed. The claimant was paid £50 per month and was subjected to serious physical abuse by the respondent and so she ultimately resigned.

In upholding the Tribunal's decision, the EAT held that:

Despite the respondent instigating the illegality, the claimant had knowingly participated in it and therefore the claims for unfair dismissal, holiday pay and breach of contract were unenforceable. Nor was she entitled to any potential loss of earnings resulting from her discriminatory dismissal because she never had the right to work in this country. The only plus side for the claimant was that she was entitled to an award for injury to feelings as the Tribunal found that the claim was not 'inextricably linked' with the illegality.

## The Beecroft Report

On 21 May 2012 the Government released Adrian Beecroft's controversial "Report on Employment Law". The report had been commissioned by the Department for Business, Innovation and Skills (BIS), as part of its 'red tape challenge', which is aimed at identifying areas of employment law that can be simplified in order to increase growth and help businesses create jobs.

The headline recommendations from the report include:

- **Compensated no-fault dismissal**  
This is one of the most controversial aspects of the report in that it recommends that an employer should be able to dismiss underperforming employees for no reason provided that, following consultation, employees should receive compensation equivalent to a redundancy payment and their notice.
- **Extension of qualifying period**  
Beecroft agrees with the recent extension of the qualifying period for bringing unfair dismissal claims from one to two years and considers the period could be extended beyond two years.
- **Opt-out for small businesses**  
The report proposes that businesses employing fewer than 10 people should be able to opt out of current (and proposed) regulations such as those relating to unfair dismissal, pension auto-enrolment, right to request flexible working (other than for parents and carers), flexible parental leave and more.
- **Discrimination**  
Beecroft has suggested that the current law making employers liable for discriminatory comments made by customers or employees to another employee should be rescinded.
- **Reintroduction of the default retirement age**  
The report suggests that if monitoring shows that the abolition of the default retirement age deters employers from hiring older workers and/or has made it difficult to remove older workers, the default retirement age (albeit potentially at an age higher than 65) could be reintroduced.
- **Streamlined capability procedures**  
The report suggests that the process for proving that employees are unable to perform their roles should be streamlined.
- **Employment Tribunal process and awards**  
The report disagrees with fines for employers who lose unfair dismissal cases. Beecroft suggests a review of the ACAS rules to determine whether they need to be simplified. He supports the introduction of tribunal fees for every claim but recommends that wealth, as well as income, should be



used when assessing eligibility for fee remittance. It is suggested that Polkey reductions (i.e. where a tribunal reduces a compensatory award when the employee would have been dismissed even if the employer had followed a fair procedure) should apply to basic awards as well as compensatory awards. A cap of nine months' pay is suggested on the compensation for loss of earnings that can be awarded in discrimination cases.

- **Pension auto-enrolment**  
In addition to the opt-out of pension auto-enrolment schemes for small businesses noted above, the report recommends that businesses with fewer than five employees should be excluded from the auto-enrolment scheme.
- **Collective redundancies**  
It is suggested that the statutory consultation period for employers wishing to make more than 100 people redundant should be reduced from 90 days to 30 days.
- **Transfer of Undertakings Protection of Employment (TUPE)**  
The main recommendation regarding TUPE is that UK law should be changed to allow the transferee company to harmonise the terms and conditions of transferred and original employees from one year after the transfer. The report also recommends that the transferor should be allowed to make redundancies before the transfer in certain circumstances and suggests that the service provider provisions should be replaced (but does not make a suggestion as to what should replace the provisions).

## Comment

The issue of compensated no-fault dismissals has caused the most comment in the press, particularly since it has evidenced tensions in the Coalition, which has divided down party lines. Aside from the political debate, however, it should be noted that a number of the recommendations in the report are already in the Employment Law Review but subject to calls for evidence or consultation, as noted in the Government response.