

Rightfocus

Focussing on legal issues important to you

Health and safety – the need for change?

The UK has a culture of ‘over-compliance’ with health and safety matters and a rapidly expanding industry of specialist consultants in whose interests it is to exaggerate the levels of risk mitigation required to comply with legal requirements.

These opinions are included in a recent report, Health and Safety: Reducing the Burden, by the Policy Exchange think tank, which serves to support the increasingly widely held public belief that too much in our society is the result of ‘health and safety gone mad’.

The report’s author, Corin Taylor, who is a senior policy adviser at the Institute of Directors (IoD), believes that much needs to change. As he says: “Health and safety regulation has a long history and a noble purpose. Britain has gone from a country where children climbed chimneys to sweep away coal dust to virtually the safest place to work in the EU.

“But something has clearly gone wrong. There’s such an enormous amount of uncertainty about health and safety legislation, that this has led to a culture of over-compliance. Matters are little helped by the fact that there are no qualifications required to become a health and safety consultant, and it’s possible to acquire an industry-respected health and safety certificate after just 10 days.”

Such a low barrier of entry to becoming a consultant has seen the creation of more than 1,500 specialist health and safety firms emerge, comprising a fast-growing sector that analysts currently value at between £700 million and £1 billion.

While the report does not question the importance or relevance of appropriate legislation and enforcement to protect the well-being of workers, it does call for more clarity on the legal requirements facing businesses and for a reassurance that only proportionate, commonsense and practical steps need to be taken.

In addition, it recommends among other matters that a minimum qualification standard should be introduced for consultants and that steps should be taken to lower the cost of health and safety legislation. It also questions whether some requirements, including risk assessments, should be lifted from low-risk businesses, and whether self-employed people should face any requirements at all apart from the need not to harm others.

As the report concludes: “The last, and biggest, question is whether we should really try to eliminate all risk, or whether we should try to manage risk effectively. At some point, the marginal cost of risk-mitigation will exceed the marginal benefit of fewer injuries.”

Clear Advice: Plain English

The **Employment team** advise on all aspects of the employment relationship, including the rights, obligations and remedies available to both employers and employees. The range of matters the team can offer advice on include the employment contract and associated policies/procedures, discrimination, maternity and other family friendly rights, dismissals and transfer of undertakings.

The **Company Commercial team** concentrate on giving pragmatic, practical and competitively priced legal advice to medium sized businesses and institutional clients. The team advises on all legal aspects of business and company acquisitions and disposals including raising of corporate finance, shareholder’s agreements, share issues, takeovers and mergers.

The **Commercial Landlord and Tenant team** advise in relation to both contentious and non-contentious areas. The team has a heavy emphasis on industrial, office, retail and leisure premises. The range of services the team can advise on include taking, granting and renewals of leases, Landlords Consent Licenses and recovery of rent arrears and repossession of premises.

The **Commercial Property team** offers a full range of legal services to buyers, developers and lenders. The team offers a complete range of expertise reacting quickly to clients’ requirements with practical and cost-effective advice. The team can advise on acquisitions, disposals and leasing of commercial, industrial and retail properties, planning applications, appeals and enquiries.

The **Commercial Litigation team** advise on commercial contractual problems, disputes, commercial debt recovery, employers liability including Health and Safety at Work disputes.



Uncovering dubious business practices

When a director uncovers what might be called ‘dubious’ business practices in his or her company, they can find themselves in a problematic situation – particularly if they find that there has been an attempt to disguise the company’s true financial situation.

If you find yourself in this position, it is very important first to establish the true facts before taking any action. Once you have uncovered the impact, scope and severity of the situation, you need to consider your ethical position, particularly in light of the duties of directors under the Companies Act and your own contract of employment.

To make sure that you fully understand your obligations, talk with your board colleagues or HR department, ensuring that you do not breach confidentiality. Do bear in mind, however, that provided you make a ‘protected disclosure’, you are protected by the Public Interest Disclosure Act 1998 against discrimination by your employer.

At this point, it will always be sensible to seek professional legal advice from Metcalfes. While taking the wrong action might have awkward ramifications, taking no action may place you in an even more difficult legal situation, so it is important that you have the best possible guidance.

New Act to eradicate inequality

More than 40 years after the first legislation was introduced in this country to prevent discrimination, many inequalities still exist in the workplace.

It is to eradicate these – including lower pay for women and high unemployment among ethnic minorities and disabled people – that the new Equality Act is to be implemented this autumn following its final reading in the House of Commons in late March.

The new Act, designed to streamline and strengthen the current position, has been championed by the Commission for Equality and Human Rights (CEHR). It has condensed nine major existing pieces of legislation and some 100 other measures into a single Act.

We will look at the new Act in more detail in the next issue of Right Focus, but we must emphasise now the importance for businesses of training their employees in its requirements.

This is because a number of formerly usable ‘defences’ against prosecution under anti-discrimination legislation have now been removed, and because the potential cost of being found guilty have risen. For example, awards for injury to feelings in discrimination cases will now range from £600 to £30,000.

Anyone keen to receive an impartial overview of the primary implications of the new Act should talk to Judith Ellery, head of Metcalfes’ employment department.



Company cars and the law

Many businesses that provide their employees with company cars are unaware of the legal duties and responsibilities that surround them.

There is, for example, an important distinction between contracts that provide a vehicle solely for business use and those that also allow private use. In the first case, a car may be withdrawn when the employee is not actually at work (eg on holiday or on garden leave).

On the other hand, a car provided for private use is a part of the employee’s contractual entitlement and cannot be withdrawn. Clarity is therefore important – employers should make certain that full details of the arrangement are part of the contract of employment, including the type of car provided and the replacement schedule.

Although statutory sick pay must be provided whenever an employee is off sick, employers are under no obligation to continue paying wages or salary. The situation is different with a company car however – unless there is a clear statement in the contract that car allowance will be suspended, the employee can expect it to continue.

Talk to Judith Ellery, head of Metcalfes’ employment department for fuller details and for advice on all aspects of drawing up a contract of employment.

Lying job applicant receives prison term

If job-applicants were not already sufficiently aware of the dangers of lying or exaggerating about their qualifications and experience, the six-month prison sentence recently handed to a woman who fabricated her A-levels and forged references should leave them in no doubt.

When the woman applied for a £23,000-a-year post with Plymouth Hospitals NHS Trust, she claimed two fictitious B grades at A-level and even provided a fake reference from the Royal Navy along with a false discharge certificate. It was only when she had been in the job for more than a year that her performance in the role led to questions about her qualifications.

Her imprisonment followed a 12-month suspended sentence and 200 hours of community work given to a senior manager who had been with the NHS for 19 years, who was found to have lied about his qualifications and membership of professional bodies.

Doubtless there are people in almost every workplace who have not been totally truthful – in fact, a HireScores survey from late 2009 found that 69% of all employees have lied to get a job. The suggestion clearly is that prospective employers should take greater care in verifying the claims made by applicants.

The true costs of absenteeism

Every time an employee takes a day off sick, the direct cost to the employer averages around £500. When this is multiplied by the number of businesses and the average incidence of time off, according to figures from the Confederation of British Industry (CBI) this amounts to an annual cost to UK business as a whole of more than £12 billion.

For an individual business, however, that £500 is probably a more concrete and pressing concern than the cost to the nation. In addition, two recent rulings of the European Court have the potential to make life even more difficult for employers.

The first of these found that workers on sick leave are entitled to accrue holiday rights and to be paid for this entitlement. The second found that where an employee's pre-arranged statutory annual leave coincides with illness, he or she may then choose to rearrange their leave to another time.

These are merely two further complications to an already fraught area of management that is made even more complex by additional factors like maternity and paternity leave, jury service, caring for dependents and more.

Contact Judith Ellery, head of Metcalfe's employment department to gain a full understanding of the legislation in this area and for help in creating a practical and legal strategy to drive down absenteeism costs.

Flexible alternatives to fulltime hours

From later in 2010, every time a new full-time vacancy is advertised in a Job Centre the employer will always be asked if the position could be offered part-time, as a job-share or as another flexible working alternative.

This follows an announcement by the Department for Work and Pensions, which does not plan to enforce the changes but hopes that making the suggestion to employers will result in a new culture where they seriously consider options other than full-time business hours. It is also planned that all Whitehall departments will offer jobs on a part-time or flexible basis.

Sarah Jackson, Chief Executive of work-life balance charity Working Families has welcomed the proposal, commenting: "We need to move away from the full-time default setting and ensure that many more jobs are offered on a flexible or part-time basis.

"At a time of recession, every employer needs to be fishing from the widest possible talent pool. Our full-time culture means too many talents are wasted, particularly those of women and carers, and the UK loses out."

She is keen to promote the business benefits of flexible working. "There is a positive link between flexible working and performance. Costs of absenteeism, sickness and recruitment are reduced, and there could not be a more important time to get the right talent in the right place."



Metcalfes Solicitors

**Readers are plentiful,
thinkers are rare**

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The real reasons for pulling a sickie?

A recent survey has established something that many have suspected was true – that the hangover is the biggest cause of employees pulling a 'sickie'.

The research, by recruitment company review website HireScores, found one in three people admitting that they would be inclined to call in sick on a Monday rather than any other day of the week. A quarter of the respondents said they were most likely to call in sick on a Friday to start their weekend early.

Of those people who admitted to faking illness to get a day off, a staggering 89% said they would do so thanks to a hangover. Other reasons included being tired after a late night (68%), wishing to stay with a partner (53%), wanting a holiday (49%) and not being bothered to go to work (47%).

According to HireScores Managing Director Lisette Howlett, "The next time you look around the office on a Monday or a Friday and it seems light on the ground, now you'll know why!"

"On a more serious note, this no doubt costs British employers a huge amount of money, especially in terms of lost productivity and the loss of morale of co-workers who know that their colleagues' sickness absence is not genuine."

Does money make you happy?

A new report has gone some way towards proving the Beatles' claim that "Money can't buy you love". Researchers at Cardiff University and the University of Warwick have found that earning more money only makes you happier if you feel richer than your friends, neighbours and colleagues.

Comparing happiness levels with those of other people of the same age, sex and level of education showed, in fact, that money only makes people happier if it improves their standing in society.

Lead researcher Dr Chris Boyce commented: "Earning £1 million a year appears not to be enough to make you happy if you know your friends all earn £2 million a year."

He continued, "It's important to remember that human beings are innately status-obsessed. In the days before his windfall, the lottery winner may have envied his neighbour's new car or coveted his conservatory.

"But the odd thing is that this compulsion does not diminish even if the same man becomes as rich as Croesus. He will just hanker after even grander acquisitions: his richer neighbour's yacht, his jet or his private estate off the Bahamas."

According to the researchers, this obsession with comparative fortunes is why the last 40 years' rising prosperity has not increased overall happiness levels.