

# Rightfocus

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Focussing on legal issues important to you

## Stress absenteeism is on the rise

**Stress has for the first time been officially identified as the UK's most common cause of long-term absence for sickness. This is the key finding of the Chartered Institute of Personnel and Development (CIPD) and Simplyhealth annual Absence Management Survey, which also showed that 39% of employers have experienced an increase in stress-related absence during the last year.**

The report also reveals a direct link between mental health issues and job security, with employers planning to make redundancies in the next six months significantly more likely to report mental health problems among employees.

According to CIPD Adviser Dr Jill Miller, "To a large degree, managing stress is about effective leadership and people management, particularly during periods of major change and uncertainty. Line managers need to focus on regaining the trust of employees and openly communicating throughout the change process to avoid unnecessary stress and potential absences. They also need to be able to spot the early signs of people being under excessive pressure or having difficulty coping at work and to provide appropriate support."

In addition, employers have a duty of care for the health, safety and welfare of their employees. If it can be shown that an individual's stress is due to excessive pressure or harassment at work, they might be able to make a successful case against their employer by showing that their illness was caused both by their working environment

and the employer's failure to provide the duty of care they owed. Such an employee will also in all likelihood need to prove that the employer either knew or should have known that the working environment actively exposed the employee to the risk of mental illness.

This is difficult to prove, unless there were clear indications before the diagnosis of stress that something was wrong. If this is the case (if the employee kept bursting into tears, for example) then the employer needs to find out what the problem is and how it should be resolved.

While courts look favourably on employers who provide a confidential counselling service, this tends only to be within the scope of larger organisations. Smaller businesses might be well advised to consider providing external occupational health service providers as an element of staff benefit packages.

If you are concerned about the psychological environment at your business or place of work, contact our employment law team who will be able to explain the responsibilities involved in employers' duty of care.

## 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.

The **Insolvency and Restructuring team** deals with all aspects of insolvency such as liquidations, administrations, receiverships, voluntary arrangements, corporate restructuring, bankruptcy and asset recovery.



## New rules for employment tribunals

**Major changes were announced this autumn to the UK's employment tribunal system, which the Government hopes will save UK business around £16 million each year.**

The most important change is a rise in April 2012 from one year to two in the qualifying period for unfair dismissal claims, doubling the time that a former employee needs to work for an organisation before being able to seek compensation.

In addition, employees will be charged to lodge a claim from April 2013 in a bid to reduce spurious or unscrupulous claims from being lodged.

A consultation is currently underway under the leadership of the Ministry of Justice that aims to set the level of fees to be paid by claimants, although it is expected that these will start at around £250, rising to £1,000 if the claim progresses to a hearing.

Currently it is believed that these moves will reduce the annual number of tribunal claims by around 2,000 each year. However, it is likely that a proportion of claimants will 'fast-track' their claims to beat the timetable, resulting in a possible peak of such cases before next April. Contact our employment team if your company is threatened by a possible tribunal case.



## All change for capital allowances

**Businesses need to be getting ready for forthcoming changes to how they obtain tax relief on their capital expenditure under changes to the Capital Allowance regime announced by Chancellor George Osborne in this year's Budget. This is the latest in a series of changes to Capital Allowances that have been made over recent years.**

The biggest single change to be made, which will be introduced in April 2012, is to the annual investment allowance. This used to enable companies to write off 100% of money spent on plant and machinery (not including cars and plant for leasing) up to a value of £100,000. From next April, this will be reduced to £25,000.

Other allowances will also fall, including the Writing Down Allowance and the Long Life Assets Writing Down Allowance, which take the place of commercial depreciation that is not allowed for tax. For full details of what these changes involve and how they might affect your business's capital expenditure plan, visit [www.hmrc.gov.uk/budget-updates/autumn-tax/ti1310.pdf](http://www.hmrc.gov.uk/budget-updates/autumn-tax/ti1310.pdf).

On a more positive note, new improved allowances may also be introduced to help businesses in enterprise zones, but these will depend on the outcome of current consultation.

## Agency workers update

**New Agency Workers Regulations have now been in force since the beginning of October. They are designed to ensure that a worker who is provided by a temporary recruitment agency or other intermediary to a hiring business receives treatment that is the same or no less favourable than that given to a permanent member of staff.**

For this reason, the hirer might choose to identify a "comparator" within the business – that is someone with the same level of responsibility as the agency worker who therefore receives the same basic working conditions as them.

From now on businesses and agencies face significant penalties if they are found not to abide by the regulations – so it is worth understanding the rights to which agency workers are entitled.

From day one of their employment, they must have the same access as a comparator to staff canteens, childcare and transport services, and to be kept informed of job vacancies. After 12 weeks, their pay must also be equal, including fees, bonuses, commission and holiday pay relating to the assignment. They also have the same working time rights, including any annual leave above that required by law.

Contact us if you want a full explanation of the possible impact of the Agency Workers Regulations on your business.

## Over a third of workers want flexible working

As new legislation approaches that will give all UK workers the right to request flexible working practices, a recent report has shown that more than one in three (36%) would like to have the flexibility to work from home.

Currently, according to the research by the Chartered Institute of Payroll Professionals (CIPP), 43% of workers are occasionally allowed the right to request flexible working when circumstances make it necessary.

According to Diana Bruce, Senior Policy Liaison Officer at the CIPP, "When the changes in legislation do take place, it will remain a right to request as opposed to a right to work flexibly."

As she continued, however, both businesses and employees stand to benefit from this step forward. "The right will facilitate the conversation between employer and employee which might not otherwise have taken place and if negotiated properly could help retain skilled staff, increase commitment and loyalty to the company which in turn can only be a positive move for the productivity of the business."

Contact our employment team to find out more about the forthcoming legislation and what it will mean for working practices at your business.

## ICO requests greater audit powers

The powers of the Information Commissioner's Office (ICO) to carry out audits of organisations whose handling of personal information is a cause for concern are set to be significantly expanded, following a call from Information Commissioner Christopher Graham.

Currently the only powers the ICO holds to carry out a compulsory data protection audit relate to central government departments. For all other types of organisation, including private businesses of all kinds, the ICO first needs to gain permission.

This is despite the fact that businesses are the source of the greatest number of data protection complaints. The Commissioner's frustration is illustrated by a report published during the summer showing that just 19% of businesses that receive a request for an audit agree to undergo one.

As Christopher Graham said, "Something is clearly wrong when the regulator has to ask permission from the organisations concerned before we can audit their data protection practices. With more data being collected about all of us than ever before, greater audit powers are urgently needed to ensure that the people handling our data are doing a proper job."

If you would like to know more about your responsibilities under the Data Protection Act, contact us to arrange an initial consultation.

## More recycling help for smaller businesses

The Government has launched a new recycling charter for smaller businesses aimed to help them overcome difficulties many currently have in accessing council or commercial recycling services.

Called the Business Waste and Recycling Services Commitment, this aims to bring smaller businesses together with councils and the agencies that offer best practice advice for waste reduction.

According to Recycling Minister Lord Taylor, "This deal will bring much-needed relief for smaller businesses that want to do the right thing but are struggling to find a decent recycling service. For the first time we now have solid agreements between councils and businesses that make it easier and more cost-effective for smaller firms to recycle more and improve their resource efficiency."

This move is particularly important in the light of the forthcoming rise in the rate of Landfill Tax from today's charge of £56-per-tonne to £80-per-tonne, which will push up disposal costs for those businesses not recycling the greatest possible amount of waste.

As David Caro, Chair of the Federation of Small Businesses (FSB) Environment Committee said, "FSB research has shown that 95% of businesses would recycle more if they had better access to recycling facilities, so we call on all local authorities to sign up to the commitment."

For full details on the commitment, visit [www.wrap.org.uk/local\\_authorities/business\\_recycling.html](http://www.wrap.org.uk/local_authorities/business_recycling.html)



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**Readers are plentiful,  
thinkers are rare**

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## The true value of sunlight...

**While not all the hype surrounding the money to be made from installing solar panels on your property and selling surplus power to the National Grid can be fully justified, there certainly are homeowners out there gaining an inflation-linked, tax-free 10% annual return on their investment.**

Particularly in this low interest-rate environment, such opportunities are rare indeed. But it appears as though the current generosity of the Feed-in Tariff (the amount the Government pays for surplus power) may not have long to run – under new Government proposals, it is expected that a review will cut returns by around 50% from next April for anyone whose installation has an eligibility date on or after 12 December this year. Anyone who is already on the scheme before that date will continue to receive the full tariff for the full 25-year term.

A new breed of company has recently sprung up offering to install panels on your property for free, giving you the benefit of over £200-worth of free electricity every year. This might be attractive to many, but all homeowners should be aware that in agreeing to the deal they are effectively signing away the Feed-in Tariff altogether.

Contact us for an initial conversation if you feel that you have been misled by one of these companies into accepting their offer without knowing all the facts.

## Taxman goes for gold

**Businesses and individuals planning to benefit commercially from the London 2012 Olympic Games have been warned that they might attract the close attention of HM Revenue and Customs during the build-up to the great event.**

This is because HMRC wishes to ensure that such businesses are paying the taxes that they owe, and that they are not exploiting migrant and low-skilled labour by paying less than the minimum wage. In fact, HMRC is even planning “street sweeps” to find non-compliant businesses in the build-up to the Games, and has already carried out a raid on 11 off licences in and around the London borough of Newham.

However, it is not only local businesses that could be caught in the taxman’s spotlight. During the summer, HMRC also warned the construction companies – many of which are national and international businesses – that some were breaking the law by incorrectly registering some employees as self-employed. In addition, it is telling the employers of the 70,000 ‘Games Makers’ who are volunteering in various roles to ensure that tax due on travel or accommodation expenses is paid.

If you are concerned that your business does not currently comply with Government regulations in any way, contact us for help in putting the right systems in place.