

MARCH 2009

The **ELAS** Navigator

CRB checks boost ELAS offer to business

ELAS is offering firms even greater value, with cost-effective Criminal Records Bureau (CRB) checks now included in our range of services.

We have been recognised as an official umbrella body, enabling us to process CRB checks for any company on a national scale.

In most cases, this additional service is included as part of our existing clients' package at no extra charge.

It is also available to companies who are not currently ELAS clients.

Furthermore, if you refer a contact for CRB Checks and they ultimately become an ELAS full service client you will receive a generous referral fee.

Annabel Dawkins, ELAS Marketing Manager, said: *"CRB checks have become a vital part of the recruitment process and we are delighted to have been*

granted official umbrella status. We are also very much aware of the need to provide our clients with added value during the current economic climate." ELAS offers three different types of disclosure:

Standard Disclosure

The Standard check contains details of all convictions held on the Police National Computer including current and "spent" convictions as well as details of any cautions, reprimands or final warnings.

The CRB check will show whether information is held on three government lists of those who are banned from working with children or the vulnerable.

Enhanced Disclosure

These are for positions that involve a far greater degree of contact with children or vulnerable adults. In general this type of work will involve regularly caring for, supervising, training or being in sole charge of such people.

This Disclosure involves an additional level of check to those carried out for the Standard Disclosure - a check on local police records.

Voluntary Disclosure

There is no legal requirement for volunteers to have a CRB check. The decision is made by your company based on the position applied for.



Is YOUR Business Recruiting New Staff?



Employment Law Advisory Services



MAKE SAFER RECRUITMENT DECISIONS WITH ELAS OFFICIAL CRB UMBRELLA BODY

ELAS are now a National Umbrella Body for the Criminal Records Bureau and can process CRB checks for any size company on a national scale.

Discipline and Grievance is it all change?



On 6 April 2009, the Employment Act 2008 comes into force, and from that date, the statutory dismissal and grievance procedures are abolished - or are they?

The answer is, not entirely - nothing is ever clear cut, and this is no exception. Under transition provisions, the old procedures will still apply in some cases for several months. These will cover disciplinary and grievance matters which commence prior to 6 April, and cases where the employee is dismissed before that date.

When is dismissal effective?

In the Commencement Order bringing the Employment Act 2008 into force, dismissal is defined as, *"an employee is dismissed by his employer if the contract under which he is employed is terminated by the employer (whether with or without notice)"*.

However, this definition does not identify when the employee is to be regarded as dismissed.

You should therefore take advice prior to dismissal or prior to drafting any letter confirming dismissal, where this occurs before 6 April 2009.

Consequently, in a dismissal case, the old rules will apply where the employer has sent a Step 1 letter inviting an employee to a disciplinary hearing, or has held a Step 2 meeting before 6 April, or clearly where the employee

has been dismissed prior to that date.

Any process that has commenced prior to 6th April, which could lead to the dismissal must be completed in accordance with the statutory procedure. This includes termination for capability matters and redundancies, and also where there is a non-renewal of a fixed term contract.

Failure to complete the procedure under these rules will lead to a finding of automatic unfair dismissal and a potential increase in compensation of between 10-50%. Terminations of employment, which, therefore, occur many months after 6 April 2009, may still be subject to the old law.

It is therefore essential to take advice on all aspects of procedure.

Where an issue commences after 6 April and which may lead to dismissal, the new law will apply.

Under the old law, some claims needed the employee to raise a grievance as a condition of filing a claim with an Employment Tribunal. This meant that claims could be raised anything up to 6 months from the date of dismissal or the occurrence of the issue which has led to the claim.

While this requirement will be abolished, the old law still applies where the grievance has been raised prior to 6 April.

Claimants will now have a strict 3 month time limit in which to file their claim. Certain exceptions have a longer timescale in which to apply.

If an employee files a claim later than the 3 months, a Tribunal will have no jurisdiction to hear that claim unless the employee is able to substantiate the fact that it was not practicable to file in time, or in cases of discrimination that it is just and equitable to allow the claim to proceed.

In practice the number of claims filed late that are allowed to proceed are relatively few. Employers should note that where an employee is complaining about a matter which bridges across 6 April, such as a failure to address an outstanding grievance or a continuing course of harassment, then the old law will apply if the employee raises a grievance by 4 July 2009 or presents the Tribunal claim by that date. For claims relating to equal pay or a claim for a redundancy payment not linked to unfair dismissal, then the date will be 4 October 2009.

The New Law

Just because the old law will disappear from 6 April 2009, does not mean to say that there will be a free-for-all in terms of disciplinary and grievance matters in the workplace - far from it!

Although the statutory requirement to hold

grievances and disciplinary hearings in accordance with a strict statutory format will go, employers will still be obliged to follow a fair procedure in dealing with such matters. The ACAS Code of Practice will have Parliamentary approval and will be the yardstick by which fairness will be measured. This is supplemented by a detailed ACAS Guide, which will not have Parliamentary authority, but will assist employers in dealing with disciplinary and grievance issues.

The Code itself covers both conduct and capability and performance matters, but does not cover dismissals for redundancy or ill health. In such dismissals, employers will need to demonstrate that a fair procedure was followed. With regard to redundancy, the established procedure should be adhered to and employees in general should be allowed the right to appeal.

Disciplinary rules and procedures should be clear, in writing by reference to a disciplinary and grievance procedure, and specific. Ideally employees or their representatives should be involved in the preparation of them. In respect of disciplinary proceedings, employers should raise issues promptly and not unreasonably delay procedures, meetings or appeals. Similarly, employees should not delay raising grievances where such exist.

Employers, in the application of discipline, should be consistent in their dealings with such matters.

Where appropriate, employers need to investigate issues as necessary. Where disciplinary action is contemplated, they should inform employees of the issues and give them the opportunity to put their case before decisions are made. In disciplinary meetings, employees should be given the right to be accompanied by either a fellow work colleague or a union representative. In most cases, employers' existing disciplinary and grievance procedures will comply with the new law and will carry on without the necessity for amendment.

In cases of misconduct, different individuals should carry out the investigation and the disciplinary hearing, so that the same person should not carry out both investigation and the subsequent disciplinary.

Where suspension prior to any disciplinary is imposed, this should be with pay and it should be made clear that it is not a disciplinary

sanction in itself. Where notice of a disciplinary hearing is given, the time between the notice and the hearing itself should be sufficient to enable an employee to prepare an answer. Similarly, the letter inviting an employee to a disciplinary hearing, should provide enough information to enable the employee to answer the allegations, and copies of written evidence, including any witness statements, should normally be provided.

Sanctions should be appropriate to the offence, ie a verbal warning, a written warning or a final written warning, or ultimately dismissal. The first warning may be a final one if the employee's actions have had or are liable to have a serious impact on the employer's organisation. In cases of gross misconduct a fair disciplinary process should always be followed before dismissal.

The right of appeal should be given against any sanction and appeals should be heard, if possible, by a Manager not previously involved.

Where an unfair procedure has been followed, the resulting dismissal will usually be unfair and this is not affected by the fact that the employee would still have been dismissed if a fair procedure had been followed. However, that is relevant to the question of compensation.

In a case where there is a finding of unfair dismissal because of a failure to follow a fair procedure, that dismissal, which under the old law, would be regarded as automatically unfair, will not, under the new law, be regarded as automatically unfair. This will potentially attract an increase in compensation, but only up to a maximum of 25% instead of between 10% to 50% under the old law.

Grievances Under the New Law

From 6 April 2009, there will no longer be any requirement for an employee to invoke the Statutory Grievance Procedure before filing a Tribunal claim.

The ACAS Code will encourage employees to

pursue a grievance. Where it has not been possible to resolve a grievance informally, then the employee should raise a grievance formally without unreasonable delay, in writing, and should set out the nature of the grievance. If an employee fails unreasonably to follow this guideline, this may lead to a reduction of up to 25% in any compensation provided.

There should be a right for employees to appeal against the findings of the grievance if he or she is dissatisfied with the outcome of the meeting. Where a grievance is raised during a disciplinary process, the disciplinary process may be temporarily suspended to deal with the grievance. Where the grievance and discipline are related, it may be appropriate to deal with both issues concurrently.

As always, employers are advised to take advice prior to the institution of any disciplinary process or where a grievance has been received, before dealing with issues raised by that grievance.

CRL – Solid Service, Concrete Results

Concrete Repairs Ltd (CRL) has been in business since 1955 providing specialist contracting services to the construction industry across the UK.

The core activity is concrete repairs but in the last ten years this has been extended to include concrete investigation work, structural strengthening using composite materials, corrosion control systems, insulated render and

cladding systems and liquid applied roof membranes.

A network of five regional offices provides national coverage in the UK and the company has just opened its first international office in Abu Dhabi.

The business operates in a broad market sector which includes commercial, industrial, social & private housing, water, marine, rail, highways and power.

With over 50 years Experience, CRL are one of the leading specialist contractors in the UK.

CRL Managing Director, Tony Rimoldi, says: "ELAS fully understands and supports the company policies and procedures that we have in place for effective HR management.

"Given the constantly changing legislation and challenging business environment it is reassuring



to know that we can depend on the lawyers and barristers that are available to us through ELAS on 24/7 basis.

"The advice given to us by ELAS allows the company to provide a stable, safe and fair working environment for all of its employees in an ever-changing commercial world."

Health & Safety Round-Up



Construction industry given warning by HSE

The Health and Safety Executive (HSE) is warning the construction industry of the dangers of working at height and the costs that they can incur.

The call follows the prosecution of a Swansea man after a worker received serious injuries in a fall at work.

The principal contractor and manager of the site was fined £10,000 and ordered to pay costs of £6257.40 after pleading guilty to a charge under Section 3(2) of the Health and Safety at Work etc Act 1974

His employee was working with three others on constructing a temporary floor when a joist collapsed.

He fell two and a half metres onto the floor below, resulting in serious leg injuries.

The HSE inspector said: *"Falls from height are the single most common cause of fatalities in the construction industry, and the young man is still experiencing the effects of his injuries more than two years later."*

"There were a number of serious failings which led to this incident. The risks of working at height were not properly identified or addressed, and no fall protection was provided for workers."

"Despite this incident, an unannounced inspection by HSE just over a month later showed that there was still a failure to manage risks from working at height, including an absence of guard rails on scaffolding, poor access from the building to external scaffolding and unprotected openings which were large enough for workers to fall through."

HSE demands that loads are safely secured after driver dies

The Health and Safety Executive (HSE) has warned employers that they must properly restrain loads on vehicles - whatever the distance travelled.

A Company was fined £150,000 and ordered to pay costs of £26,732 after a driver died when his load crashed through his cab.

The company had earlier pleaded guilty to charges under Section 2(1) and Section 3 of the Health & Safety at Work etc Act 1974 and had been committed for sentence at the Crown Court.

The prosecution follows an incident when a young man was driving an HGV with approximately 25 tonnes of sheet steel loaded on a trailer.

The steel was being moved between a distance of around one and a half miles.

As he slowed his vehicle approaching a roundabout, the load shifted and the sheet steel slid forwards and punched through the back of the cab, pinning him between his seat and the steering wheel.

The HSE inspector who investigated the accident, said: *"The investigation identified a number of failings, including a lack of planning and inadequate training for drivers."*

"The transport of steel had been taking place in this manner for at least eight months, putting not only the drivers at risk but also members of the public who were using those roads."

"Employers must ensure that there is suitable and sufficient planning for transport operations, and make sure that loads are adequately restrained. Friction alone should never be relied upon to secure a load."

Spotlight on Safety

Legislation	Date Enforced	Applies in	Implications
Health and Safety	16 January 2009	Great Britain	Amends section 33 of the Health & Safety at Work Act to raise the maximum penalty available in the lower courts to £20,000 for most safety offences, and makes imprisonment an option for more serious breaches
Health and Safety (Miscellaneous Amendments and Revocations) Regulations	6 April 2009	Great Britain	Make revisions to the Manufacture and Storage of Explosives Regulations 2005, revoke redundant local mining regulation, and corrects an omission in the Control of Noise at Work Regulations 2005
Factories Act 1961 and Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations	6 April 2009	Great Britain	Remove several form-filling requirements that currently apply to most businesses operating from factories, offices, shops and certain railway premises. The Regulations introduce no new requirements
Health and Safety Information (Amendment) Regulation	6 April 2009	Great Britain	Amends the 1989 Regulations to allow for new approved workplace posters and leaflets that avoid the need for businesses to add or update information

Ask the Expert...



Rebecca Edwards has previously worked for a number of charities and local authorities.

She studied a law degree at Manchester Metropolitan University and has extensive experience of providing advice and guidance within the field of employment. Rebecca is also currently studying towards a Masters degree in Human Resource Management.

Question

As an employer, are there any issues regarding religion or belief that I should be careful of in view of the recent publicity on this subject?

Answer

Religious issues have been in the news in recent months with considerable comment about putting forward religious views of one denomination or another. This has wider implications, not only for the public at large but also for the workplace.

Recently, there was the case of the bus driver in the south of England who refused to drive his bus which carried an advertisement promoting the view of atheism, the campaign for which had been launched by the British Humanist Association.

These advertisements were referred to the Advertising Standards Authority (ASA), which had received a number of complaints. However, the ASA concluded that these advertisements were

unlikely to mislead or cause widespread offence.

The ASA ruled that the advertisements were an expression of the advertiser's opinion and the claims were not capable of objective substantiation. On the 9th February, advertisements promoting the Christian view about the existence of God were launched and again are an expression of the advertiser's opinion.

Where does the law stand in matters of religion or belief?

The Employment Equality (Religion or Belief) Regulations came into force on 2nd December 2003.

From that date, it became unlawful to discriminate against workers because of their religion or similar belief.

The Regulations apply to vocational training and all areas of employment including terms and conditions of employment, promotion, transfers of employment, training and recruitment.

Consequently, it is unlawful to directly discriminate

against anyone, which is to treat them less favourably than others because of their religion or belief.

The Regulations also make it unlawful to discriminate indirectly against anyone, which is to apply a provision or practice, which disadvantages people of a particular religion or belief, unless it can be objectively justified.

Similarly it is unlawful to subject someone to harassment because of their religion or belief, harassment being unwanted conduct, which violates a person's dignity or creates an intimidating hostile, degrading, humiliating or offensive environment.

There are exceptions in very limited circumstances if there is a genuine occupational requirement for a worker to be of a particular religion or belief in order to do the job or to comply with the religious or belief ethos of the organisation in question.

A genuine occupational requirement may be applied in clerical cases such as a hospital chaplain or a Christian outreach worker.

Religious groups which do not share a common ethnicity are now protected from unfair discrimination.

Religion or belief has been defined as being any religion, religious belief or similar philosophical belief. This does not include any philosophical or political belief unless it is similar to religious belief.

Employers should be aware that the Regulations extend beyond the better-known

religions and faiths, to include beliefs such as paganism and humanism. In addition the Regulations also cover those without religious or similar beliefs, specifically including lack of religion or lack of belief.

One of the key practical employment issues for employers is that of religious holidays.

Refusing to allow time off on religious holidays constitutes indirect discrimination, as this Company rule would discriminate against certain religious groups. It is therefore only permissible to refuse such time off if the rule can be objectively justified. There must be a plausible business case for the refusal of such requests.

Any such requests should be accommodated where possible when sufficient notice is provided. However, an example of when it would be reasonable to refuse is if a significant proportion of the workforce requested the same day off thus affecting operational requirements.

Employers also need to be mindful of the Company rules and provisions of facilities, which may prove problematic for members of certain religions. These can include food storage, dress codes or quiet areas for prayer.

When implementing any Company rule or provision, employers need to be mindful of potential indirect discrimination and therefore need to provide objective justification for their actions.

For further advice, please do not hesitate to contact the ELAS advice team on 0161 785 2000.

...in the News



A report by ELAS showing that bosses were risking their health during the economic downturn hit numerous media outlets, including GMTV's website. The article was dominated by ELAS's findings and cited the firm's report that over a third of bosses were now working 50-60 hour weeks in a boosted commitment to their work. This however was causing health issues and marriage problems.

Manchester Evening News

A January column was focused solely on ELAS's findings that job cuts were at an unprecedented high with a 22 per cent rise year-on-year. Peter Mooney's insight into the situation was highlighted with findings that companies were trying to cut overheads, which frequently meant axing jobs.

Daily Express

When Carol Thatcher made headlines for being sacked by BBC, ELAS was providing expert comment.

Peter Mooney was the only lawyer to be cited in a half-page article in the popular daily paper. His comments were also picked up by the Scottish Daily Express.

Daily Telegraph (online)

ELAS was the voice behind National Sickness Day. The firm's survey of more than 700 businesses provided the facts for an article, predicting that 330,000 people would call in sick, costing firms £29 million in lost business.

Finance Markets

The recession has continued to hit the headlines over the past couple months and Peter Mooney has given comment to several outlets. Finance Markets is the industry website for financial businesses. In a February edition, ELAS provided comment on the situation, saying that the firm had seen 'an explosion' in the number of cases regarding redundancy.

BBC News Online

Unemployment figures soared to 1.97 million in the last quarter of 2008, causing headline news throughout the media. Peter Mooney was quoted by BBC News Online saying ELAS expected to see a significant increase in unemployment figures the following month. The article featured statements from other professional bodies yet ELAS was the only legal firm quoted.

Insider North West

The Government bailout for businesses was warmly welcomed in the North West with ELAS saying the initiative should see a "brake being applied to the current violent plunge towards deep recession."

Become an Employer of Excellence with ELAS



The "Employer of Excellence" standard is exclusive to users of Employersafe and carries no additional cost.

Key benefits include:

- a certificate highlighting your status as an "Employer of Excellence";

- recognition for your commitment to promoting staff welfare;
- increasing employee morale and improving staff retention;

- protecting your business.

In addition, you will be able to use the "Employer of Excellence" logo on your letterheads, website and all other marketing materials.

For further information about the "Employer of Excellence" scheme, call 0161 785 2000

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