

# Newsletter

## September 2004



### Statutory Dispute Resolution Regulations 2004

On 1st October 2004, the second major element of changes made by the Employment Act 2002 came into force.

As an ELAS client, you will have received correspondence from us setting out the changes and how to implement them within your business.

The Regulations include a number of significant changes and requirements from the original Government proposals.

In summary, the new law is as follows:

1. There will be a new statutory Disciplinary and Dismissal Procedure and a new Grievance Procedure covering all employees. There is no small business exemption.
2. The Dismissal and Disciplinary Procedure will only apply where the employer contemplates dismissal on a disciplinary sanction, other than suspension on pay or a warning (even a final written warning). You will not, however, be unlimited to disciplinary dismissals, and the procedure must be used for all types of dismissals, including redundancy, ill health and capability dismissals. It should even be used for the non renewal of a fixed term contract.

3. There will also be a modified procedure which will apply to instant dismissals, where no prior procedure is reasonable in the circumstances.
4. Modified (one stage) grievance procedure will apply to grievances raised or outstanding at the termination of employment, but only if the parties agree in writing.
5. If the dismissal procedure is not used to dismiss an employee in a case where it is required, and unless this is the employee's fault, the dismissal will be automatically unfair. If the procedure is used, or the employee prevents its use, this matter will not be procedurally unfair, unless there is some other procedural failing which would or might have affected the outcome.
6. Failure to use or make available an applicable procedure may result in any award made subsequently by an Employment Tribunal being increased or decreased by at least 10% or up to 50% dependant upon which party was at fault.

**IT IS IMPERATIVE THIS PROCEDURE IS USED AS A MATTER OF COURSE, AS FAILURE TO USE THE PROCEDURE COULD AFFECT THE INDEMNITY PROVISIONS OF YOUR POLICY WITH US. IF YOU ARE IN ANY DOUBT PLEASE DO NOT HESITATE TO CONTACT US ON:**

**0161 785 2000.**



Employment Law Advisory Services Ltd  
Lancaster House,  
Old Wellington Road,  
Eccles, Manchester M30 9QG

Tel: 0161 785 2000  
Fax: 0161 787 7335  
[www.employment-law.uk.com](http://www.employment-law.uk.com)

## Employment Law and Health & Safety Training

**As mentioned in previous issues of the Newsletter, we are proud to announce that our new training and seminar department is now up and running and is taking bookings for training courses/seminars.**

**Enclosed in this edition is a leaflet which you might find of use to you when considering the training needs of your Company. In view of the recent changes in legislation, it may be worthwhile considering one of our courses to ensure that your procedures comply with up to date legislation. If you wish to discuss your training needs, please feel free to call John Peel on:**

**0161 785 2000.**

### 63 Changes to Employment Tribunals

From 1st October the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 come into force. The purpose of the Regulations is to streamline the Employment Tribunal procedure with a view to getting rid of frivolous and vexatious claims brought by employees against their employer, and hopefully reduce the number of employment Tribunals in the UK.

Remarkably, there are 63 changes to the legislation which have completely overturned the way in which an Employment Tribunal can be conducted, and there are strict time limits and guidelines laid down, of which, if not followed, could lead to defences by employers being struck out and/or even constitute an award for failing to comply with the procedure.

There is a heavy emphasis on costs and failing to comply with the procedures may lead to cost awards being made against employers for non compliance. Therefore, it is imperative that in the event of an employer receiving a claim to an Employment Tribunal, we are advised immediately to enable us to put procedures in place to prevent any award of costs being made against you.

We here at ELAS are confident that we have the relevant systems in place to enable us to assist in the event of Employment Tribunal claim. However, it is imperative that we are informed at the outset to avoid being penalised at a later stage of the proceedings.

There are changes being made in how to bring a claim by an Applicant, and how the claims are accepted by the Tribunal. There are then numerous rules on how a case proceeds thereafter, and the Employment Tribunals have been given wider ranging powers to deal with employment

matters and other associated subjects which in essence, increases the need for our services, if for no other reason other than to ensure that the rules are complied with. In summary, the major changes include:

- New mandatory forms will be introduced for all parties from April 2005. These will require the Applicant (Claimant) to provide more information about financial losses.
- New rules on cost will be introduced to enable the Tribunals to filter claims that are vexatious and frivolous applications.
- The rules will establish a strict assessment of jurisdiction before claims can be filed.
- There will be a compulsory conciliation period of 7-13 weeks, during which no hearings will be scheduled, except in discrimination, whistle blowing and other complex cases. This will take place via ACAS. If you have a case ongoing or you think you may be about to have a case against you, then please do not hesitate to contact us on the advice line, 0161 785 2000.





# RECENT CASE LAW

## When Do I Suspend An Employee?

Suspension is not necessarily a discipline issue, it is more of a holding measure to enable you to investigate a situation. If a suspension issue arises, resist the temptation to act too swiftly. The following is a list of guidelines to enable you to give due consideration to give all elements of the suspension.

- Suspend where it is really necessary, for example where there is a risk to others.
- Make it clear that suspension does not imply guilt.
- Explain that should disciplinary action be taken following the investigation, the procedure will be fully explained and he/she will be entitled to be accompanied at the hearing.
- Attempt to find alternative work for the employee instead of suspension, i.e. another department, unless the suspension is connection to an issue of gross misconduct, consider giving the employee paid holiday if they agree.
- The new statutory Dismissal and Disciplinary Procedures that come into force on 1st October will not affect the way you handle suspension. The **Employment Act (Dispute Resolution) Regulations 2004** expressly states that dismissal and disciplinary procedures do not apply when the employer contemplates suspension on full pay. This means that the employee will continue not to be entitled to be accompanied or represented at the suspension hearing, however, you may need to be careful in certain circumstances.

A recent case of **Gogay v Hertfordshire County Council**. Gogay worked in a Children's Home, she was accused of sexual abuse on the basis of something said by a child, (who was always making up stories), to another care worker. Without further ado, the Council suspended Gogay who returned to work at the end of the investigation as no evidence was found against her. Gogay took the decision to suspend very badly and claimed constructive dismissal. The case ultimately reached the Court of Appeal, which said there had been no actual allegations of sexual abuse despite the Council writing to Gogay in these terms. The suspension had, therefore, been a knee-jerk response to the child's remarks. Instead of suspension, the Council should have considered transferring Gogay to other work pending the outcome of the investigation. It therefore follows that allegations should be checked first as they may amount to nothing, and if you act without good reason, it could lead to a constructive dismissal claim. In Gogay's case, she also won damage for psychiatric illness suffered as a result of her suspension. If in doubt call our advice line and speak to one of our Consultants on: **0161 785 2000**.

# NATIONAL MINIMUM WAGE

The annual revision of the **National Minimum Wage** takes place on **1st October 2004**, the new rates are:

**£4.85 per hour**  
for Adult Workers

**£4.10 per hour**  
for workers who are  
18yrs - 21yrs

**£3.00 per hour**  
for workers who are  
16yrs - 17yrs  
(this is an addition to  
the old legislation).



## !! STOP PRESS !!

### An Employee's right to time off for Dependants

After receiving several enquiries from clients regarding time off for Dependants, it is worthy to remind all clients that an employee has a right, which is a Statutory right, to a reasonable amount of time off to provide assistance to a Dependant if they fall ill, give birth, is injured or assaulted, if the employee needs to make arrangements for the provision of care for a Dependant who is ill or the Dependant dies, or because of an unexpected disruption of arrangements for the care of the Dependant, or to deal with an incident which involves the children of an employee which occurs unexpectedly.

The employee must explain to the employer the reason for the absence.  
*Who is recognised as a Dependant?*

1. a spouse
2. a child
3. a parent
4. a person who lives in the same household as the employee other than by reason of being an employee, tenant, lodger or boarder.

All clients are reminded that if an individual requires time off for any of the above, and is then dismissed **EVEN WHERE THE EMPLOYEE HAS LESS THAN 12 MONTHS SERVICE THEY CAN CLAIM AN AUTOMATIC UNFAIR DISMISSAL FOR NOT ALLOWING THEM TO ASSERT A STATUTORY RIGHT.**

## **HEALTH AND SAFETY**

### **Fire and Explosion in the Workplace**

Fire and explosion in the workplace can have catastrophic and tragic consequences. Fortunately, major disasters such as Kings Cross underground station and the Bradford football stadium fires that lead to the loss of hundreds of lives are rare events. However every week there are news reports of fires and explosions in factories and other workplaces across the country. Fortunately most do not cause loss of life but even so the consequences can be devastating.

A major fire could mean that your business is totally wiped out, due to total loss of the property, plant and equipment, materials and administration documentation. If the fire authority found that the fire had been caused by your negligence, then there is no guarantee that your insurance provider will pay out.

There are three different Health and Safety regulations that require employers to put certain precautions in place to manage and reduce the risk of fire and explosion.

**The Management of Health and Safety Regulations 1999 Regulation 8 and 9** requires that procedures are put in place to deal with serious and imminent danger and to have contact with external services. What this means is that there must be specific and clear instructions on what to do in the event of a fire or explosion. The instructions should state clearly how employees are expected to respond in an emergency, where the safe assembly point is, if some employees are given responsibilities in an emergency the instructions must state what they must do and what they must not do, for example **“employees must leave the building by the nearest fire exit”** and **“you must not stop to collect personal items, do not re-enter the building until given permission by the fire authority”**.

Your fire and emergency plan must also take into consideration the evacuation of disabled



people, eg, if you have someone who has impaired hearing who will need someone to tell them the fire alarm is sounding or a disabled person in a wheel chair will require help to get them out of the building.

The instructions must be displayed in prominent places throughout the workplace. If there are areas of high risk in your workplace such as a gas bottle store, then someone must be given the responsibility of informing the emergency services when they arrive. This person should also inform the emergency services about where the fire is and if all personnel are out of the building and if there are any chemicals or other substances that may put them at risk.

**The Fire Precautions (Workplace) Regulations 1997** require that all people who own or use a building should carry out a fire risk assessment

that will help you to manage the risk of fire in the workplace. The risk assessment must consider all aspects of the building, what it's used for, and the people who use it.

Sources of fuel and ignition such as waste paper, gases and flammable liquids, electricity, welding, grinding, cooking heat treatments, are all sources of ignition. The risk assessment also covers the fire equipment and precautions that you have in place, what sort of extinguishers are in place and are they easily accessible, is there adequate fire evacuation signage and are the fire evacuation routes and exits kept clear and easily identifiable, is there a safe assemble point, how often is the fire alarm tested, is it adequate?

All these issues will be identified by the assessment and from this you can decide what extra precautions you may need to put in place, for instance, your employees may require fire safety training.

**The Dangerous Substances and Explosive Atmospheres Regulations 2002** - these Regulations are intended to control and reduce the risk of fire and explosion in workplaces where there is a risk from substances such as dust, solvent fumes, paint spraying, gases, anything that may cause fire and explosion. Again, they require a risk assessment and precautions putting in place, these precautions may be extraction and ventilation to remove the vapour or explosive atmosphere or explosion paths that



direct the explosion away safely.

All flammable liquids must be kept in a flameproof locker, compressed gases must be kept away from other sources of fuel and ignition, preferably outside in a locked cage. In fire, one acetylene bottle will cause the emergency services to evacuate the whole area for a 200 metre distance, because an explosion from one bottle is like a high explosive bomb going off.

Remember the fire Triangle, there can be no fire without HEAT, FUEL, AIR. There is nothing that can be done about the air, but keeping the heat and fuel separate means you cannot have a fire. Simple fire precautions can prevent the loss of your business and ensure your employees' safety and livelihood.



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