

@ ELAS Newsletter

EMPLOYMENT LAW
ADVISORY SERVICES LTD

Employersafe grabs the headlines

National minimum wage reminder

By way of reminder, as of October 1, 2005, the current national minimum wages are as follows:

- For workers aged 22 and over: £5.05 an hour;
- For 18- to 21-year-olds: £4.25 an hour;
- For 16- and 17-year-olds: £3.00 an hour.

It is worth noting, however, that 16- and 17-year-old apprentices are exempt from this young workers' rate and that the rate only applies to those above the compulsory school leaving age.

Surprisingly, the school leaving age differs as to which part of the United Kingdom the young people reside.

In England and Wales, young people must stay at school until after the last Friday of June in the school year in which their 16th birthday falls.

In Northern Ireland, they must attend school until after June 30 of that year.

And in Scotland, pupils whose 16th birthdays fall between March 1 and September 30 may not leave before May 31 of that year. Pupils aged 16 between October 1 and the last day of February may not leave until the start of the Christmas holidays in that school year.



EMPTY OFFICE: Employersafe can combat absenteeism

ELAS's ground-breaking software Employersafe has continued to grab the headlines in recent months.

Almost every national newspaper in the UK has reported on the state-of-the-art system, while senior consultant Peter Mooney has made regular appearances on BBC Radio Five Live and a string of local and regional radio stations.

While thousands of workers enjoyed an extra day off after New Year, for example, the Daily Express ran a full-page feature on the software warning lazy staff that the days of the sickie were numbered.

And the software was even featured on Tonight with Trevor McDonald when ITV1's flagship current affairs programme looked at how Britain's sicknote culture was costing its economy millions of pounds each year.

As well as demonstrating how the computer system enabled businesses to clamp down on lazy staff, the programme visited one of our clients to see the effect Employersafe has had on their business.

Professional Polishing Services was a specialised business of around 30 employees servicing the stainless steel industry when it invested in Employersafe last year.

Yet in just six months, the software had helped the business to identify which employees were frequently absent.

After pro-actively managing those staff, the firm was able to improve their attendance, boosting productivity and saving the company around £15,000.

For them, the unique way in which Employersafe dealt with

absenteeism was one of the key attractions of the dynamic software.

For unlike other packages, Employersafe can identify patterns in illness, and therefore single out the workers who only ever fall ill, for example, on Mondays or Fridays.

The simple-to-use computer program, developed by ELAS at a cost of around £600,000, works proactively to tackle all manner of legal issues in the workplace, from contracts to complex disciplinary procedures.

It then guides employers through the correct procedures to be followed in tackling the issue, ensuring they not only solve their problem but also stay within the law at all times.



ELAS helps NHS manage health and safety

Hot on the heels of Employersafe's success in tackling the nation's personnel problems, ELAS was contacted by a number of NHS Trusts.

But it was not only our personnel software which was of interest to the country's health managers.

For perhaps more than many businesses, NHS Trusts are acutely aware of the problems presented by managing health and safety.

Not only is there the list of multiple sites on which many modern hospitals are based and the number of daily visitors, there is also the constant risk of

keeping drugs and other controlled substances.

And with the various manual elements of patient care, coupled with the fact that many staff are working with vulnerable members of society, NHS Trusts have an unenviable list of specific risk assessments to carry out as well.

Fortunately, the one task that can be made easy for them is in choosing the correct health and safety support to use.

In recent weeks, members of the ELAS team have been able to sit down with a number of Trusts and explain how Employersafe Intelligent Health and Safety can solve their problems.

ELAS health and safety consultant Keith Wagstaff said: *"There are few things more difficult, in terms of health and safety, than monitoring such difficult issues such as storing drugs on a number of different sites at once."*

"What Employersafe does is that it centralises all the Trust's information, then makes it manageable by automating all the routine tasks which can make a manager's job so hard."

So instead of being a seemingly endless list, its specific risk assessments become a range of calendar reminders.

Similarly, there is no confusion as to which procedure to follow

for which assessment, because Employersafe looks after that as well.

And for the rare circumstances when a deadline is missed, not only will the NHS manager see a red light on screen - so will ELAS's consultants.

"With the ever increasing pressure it is put under, the NHS has enough to worry about without health and safety becoming another unneeded burden."

"What Employersafe really does best is it provides all users with peace of mind, allowing them to get on with what they do best - managing the NHS."

FREE SEMINARS for firms daunted by Employment Law

More and more businesses are settling employment disputes they could have won rather than face a costly and damaging case in public.

Yet in many cases, complying with the ever-increasing burden of red tape on small businesses needn't be as difficult as many companies believe.

Recent figures from the Confederation of British Industry suggest that small businesses have lost faith in the tribunal system and are even settling cases that they would have won.

In a recent poll, every single company the CBI contacted with fewer than 50 employees admitted having settled a claim, despite the fact that half of them had been told they could win at tribunal.

Senior ELAS consultant John Peel said: *"This is clearly a worrying trend."*

"While innocent employers pick up the bill, unscrupulous workers are filing claims that have no chance of winning in the hope that the case is settled."

"Armed with the right legal knowledge, there is no reason at all why businesses should foot the bill for an overly-complex legal system."

To help address this imbalance, John has embarked on a series of free seminars for SMEs.

During each two-hour seminar, John will give advice on proposed changes to employment legislation and how to avoid costly tribunals and compliance with health and safety regulations.

Seminars due to be held in the coming months include:

March 7:
The Britannia Stadium,
Stoke on Trent

March 21:
Park Inn, Cardiff

April 4:
Courtyard by Marriott,
Slough

April 27:
Leeds United Football Club,
Leeds

May 9:
The Coach House Hotel,
Romford

May 16:
Middlesbrough Football Club,
Middlesbrough

May 25:
Cambridge Moathouse,
Cambridge

June 8:
Newcastle United FC

To book a place at any of the above events call 0161 785 2000

Lazy workers escaping punishment over sickies

A quarter of small businesses are so scared about being sued that they are refusing to tackle their own lazy staff.

A recent survey by Employment Law Advisory Services found that one in four SMEs had far more staff throwing "sickies" than it has taken action against.

Yet 90 per cent said they would discipline their workers if they were legally confident to do so.

"Many companies these days are so convinced that employment law is weighted on the side of employees that they are afraid to tackle what are serious issues in the workplace," said Peter Mooney, head of consultancy at ELAS.

"This survey shows that for a large number of businesses, that means suffering at the hands of lazy workers rather than face up to issues such as excess absenteeism.

"They are so scared that they will end up in court for tackling an issue head on, that they sit back and suffer when they don't need to."

The solution is for companies to use ELAS's revolutionary pro-active software to spot which staff had problems with their attendance, then guide employers through how to deal with it properly.

"That way, employers needn't be scared to act when there is an issue, but can relax knowing that they are complying with the law at all times," added Mr Mooney.



Peter Mooney

Recruitment Issues

Recruitment is such a perennial, routine issue that it is often considered to merit little detailed consideration.

But if anything, the fact that this is an everyday task often means it deserves more, not less, attention.

Employers always have to recruit, whether for staff moving on, during company expansion or to cover maternity leave or career breaks.

The key to ensuring a trouble-free process is preparation.

The essential points are:

- Having an accurate job description;
- Having a person specification, containing the necessary and desirable qualifications, experience and skills needed to fill the post;
- Choosing the method of advertising the job for the widest coverage, including the use of recruitment agencies and obtaining quotations;
- Having a recruitment procedure in place to avoid accidental discrimination on the grounds of sex, race, disability, sexual orientation or, of particular importance during 2006, age.

With regard to potential age discrimination, any existing recruitment procedure will have to be reviewed.

Having undertaken the recruitment exercise, it is also essential to have a properly planned induction procedure in place to ensure a smooth integration for the new employee into the workforce.

For further advice - and to enquire about the ELAS training course Recruitment and How to Avoid Pitfalls - contact the ELAS consultant team.

Cupid gets his cards

A THIRD of British businesses want Valentine's Cards banned from the workplace rather than face the risk of potential sexual harassment claims.

Just days before Valentine's Day, an ELAS survey found that such are the threats posed by cards that bosses would prefer to see them banned altogether.

And if the cards were to lead to something more, a staggering nine out of ten believe that office relationships are bad news for business.

"The problem with Valentine's Cards is that there is a tremendous risk for them to be misinterpreted," said head of consultancy, Peter Mooney.

"Like any comment of a romantic or sexual nature, the potential for them to backfire is tremendous -

landing employers at an employment tribunal fighting a serious case of harassment or sexual discrimination."

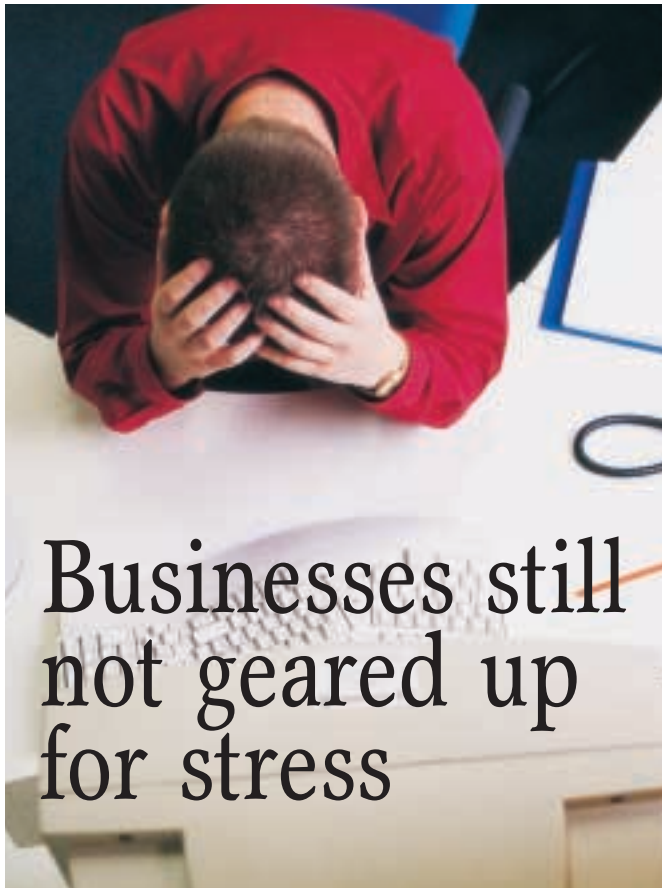
Around 50 million cards and 100 million sexy text messages are sent in the UK on Valentine's Day - including millions sent by supposedly anonymous admirers - on what is traditionally the most romantic day of the year.

"All it takes is for one person to take offence and any employer could find themselves being accused of sexual discrimination simply for allowing the cards to be sent."

ELAS polled 600 small and medium sized businesses on their attitudes towards office romance.

Love's Labours Lost as even Cupid gets bound in Red Tape





Businesses still not geared up for stress

As many as one in five small businesses are yet to deal with new legislation on workplace stress.

Recent changes to the law - as detailed in our last newsletter - mean that employers could face a huge rise in tribunal cases because of stress.

As of December 2005, stress no longer needs to be clinically identified as an illness to be considered a disability by the courts.

The result is that, if employers are not careful, the number of cases brought by their staff citing discrimination could soar.

Yet despite that, thousands of small and medium-sized businesses have yet to amend their policies accordingly.

In a recent survey of more than 600 SMEs by ELAS, just under 20 per cent of firms said they had not reacted to the change in legislation.

And asked whether they would, for example, give staff time off

to exercise during their working day in an attempt to reduce their stress levels, more than two thirds of businesses said they would not.

"The most important thing for employers to do in light of this change in the law is to treat stress far more carefully," said Pam Rogerson.

"Any allegations of stress need to be dealt with promptly, with meetings arranged and medical reports obtained as quickly as possible."

"That report can then be used as a guide for employers to address their workers' concerns."



Pam Rogerson

Age Discrimination Update

At the time of going to press, employment lawyers across the UK were still waiting for the Government's final draft regulations on age discrimination.

The new legislation which is due to come into force on October 1, 2006, is widely expected to be among the most far-reaching in recent years.

Details of the new regulations, therefore, were due to be laid before Parliament during the first quarter of 2006, setting out not only exactly what the law will be changed to, but incorporating transition

regulations in order to smooth, as far as is possible, the change later this year.

In the meantime, however, what we know of the drafts so far suggest the regulations will focus upon prohibiting all forms of unjustified age discrimination in employment and vocational training.

One of the most obvious changes will be the effective end of automatic retirement ages below 65. Any employers who have a retirement age of less than 65 will be required either to justify that age, or to change it.

A new duty will also be introduced on employers to consider any request by employees to continue working beyond the age of 65.

And the regulations are also expected to remove the upper age limit for unfair dismissal and redundancy rights, which is currently also set at 65.

This will then give older workers the same rights to claim unfair dismissal or to receive a redundancy payment as younger workers, unless there is a genuine retirement.

It is also anticipated that the regulations which come into force in October will include provisions relating to service-related benefits and occupational pensions, as well as remove the age limits for statutory pay for sickness, maternity, paternity and adoption.

The time to begin adjusting to these forthcoming changes is now. If anyone has any questions or queries regarding any aspect of the proposed legislation, please contact the ELAS Consultant team.

Ask the Expert...



Question

I have been receiving numerous complaints regarding the personal hygiene of one of our office staff. Other employees are now refusing to work alongside the individual concerned. What can I do?

Answer

Clearly, this is very embarrassing for all parties concerned, but I'm afraid you will have to approach the employee to discuss the situation with them.

If you are in a situation whereby your other employees are now beginning to complain and refuse to work with them, then clearly this is going to have an effect on your business.

An informal meeting, therefore, would be appropriate to discuss the issue with the employee concerned.

If there is no improvement after that meeting, you are quite entitled to go through the disciplinary process, and could

ultimately dismiss the employee if improvements are not made.

In *O'Boyle v British Telecommunications*, it was held that the employee was fairly dismissed after failing to heed warnings to improve his personal hygiene.

Other employees had made numerous complaints that they could no longer continue to work with or alongside him because of his body odour, and the tribunal agreed that something had to be done.

John Peel.

John W. Peel LLB (Hons)

John has a wealth of experience in the employment law field and has represented clients in more than a thousand Employment Tribunals.

His background is rooted in both the industrial and legal profession and he specialises in discrimination work.

He has a hands-on approach and is greatly experienced in producing and conducting training in all aspects of Employment Law.

In addition, as a senior consultant for ELAS, he travels the country delivering seminars on both Employment Law and Health & Safety regulations, providing sound advice to employers nationwide.

Transfer of Undertakings

New rules on transfers are scheduled to come into force in April under the revised Transfer of Undertakings (Protection of Employment) Regulations 2006.

These Regulations provide employment rights to workers when their employer changes as a result of a transfer of an undertaking, or part of an undertaking.

The rights and obligations contained in the 1981 Regulations will remain in place although the new regulations contain revised wording to make their meaning clearer.

Some aspects of the regulations are widened to cover cases where services are outsourced, insourced, or assigned by a client to a new contractor. These are described as service provision changes.

Under the changes, there will be a new duty on the transferor – ie the old employer – to supply information about the members of staff who are to transfer to the new employer by providing what is described as employee liability information.

There will also be special provisions making it easier for insolvent businesses to be transferred to new employers.

As is generally well known, regulations are in place to protect the existing terms and conditions of employment for employees whose employer changes because of a transfer of undertakings.

The new regulations will contain provisions which clarify the ability of employers and employees to vary contracts of employment by agreement in circumstances where a relevant transfer occurs.

Dismissal because of a transfer is usually an automatically unfair dismissal where the employees affected have that right.

As of April, these regulations will be updated to clarify the circumstances under which it is unfair for employers to dismiss any members of staff for reasons connected with a relevant transfer.

It is essential that any client contemplating any acquisition or disposal contacts the ELAS Consultant team for further advice before taking such action.



...in the News

JANUARY 2006

The Daily Express

The Daily Express claimed that ELAS's groundbreaking new software, Employersafe, heralded the end of the 'sickie'. A further article in the newspaper's Leader column also talked of the 'unhealthy culture' surrounding those taking sick leave when they shouldn't be - identifying absenteeism as one of the pressing issues of the day and acknowledging ELAS' part in combatting it.

The Daily Star

The Daily Star told of how a computer spy - ELAS's Employersafe software - could lead to lazy workers facing the sack. The story also reported an ELAS survey which revealed that a quarter of businesses were too scared to tackle even the staff they knew were abusing the system, for fear of ending in a costly and time-consuming tribunal.

BBC Radio Five Live

Head of consultancy Peter Mooney took part in a live debate on Five Live's Anita Anand show as a panel discussed the issues surrounding workplace absenteeism. The interview came after ELAS published results of a recent survey which found that as many as one in four business owner-managers had staff they wanted to tackle over their attendance, but lacked the legal confidence to do so.

Irish Independent

The Republic of Ireland's leading quality newspaper ran a feature on how workplace absenteeism in Southern Ireland has now hit epidemic proportions. To deal with the problem, a growing number of firms are now investing in state-of-the-art computer wizardry which helps track exactly how much each employee's sickness record is costing their company

- and alerts managers to when disciplinary action is necessary.

Yorkshire Post

The leading regional morning newspaper reported on how fear of the law surrounding employment rights was protecting lazy staff by preventing businesses from taking action even against the staff they know are abusing the system. The story quoted an ELAS survey which found that a quarter of small businesses had more staff with attendance problems than they had taken action against.

Saga Radio

The East Midlands commercial radio station ran an item looking at how Employersafe was helping businesses keep track of which workers were feigning illness to avoid work, including an interview with Peter Mooney.

Liverpool Echo

A regular column in the Liverpool Echo, which is written by lawyers at ELAS, helps businesses with their questions on employment law and health and safety.

Law Society Gazette

The legal profession's weekly newspaper reported on how a quarter of businesses were reluctant to take legal action against employees for fear of being taken to an employment tribunal. A staggering nine out of ten businesses polled in a survey of 600 small businesses had revealed that they would discipline staff if they had the legal confidence to do so.

Manchester Evening News

Senior lawyers from ELAS once again shared their advice to SMEs across Greater Manchester by answering questions in the MEN's business section.

FEBRUARY 2006

Tonight with Trevor McDonald, ITV1

ITV's flagship current affairs programme chose National Sickie Day - the most popular day for lazy workers to take off as a fake sick day - to look at the issues surrounding absenteeism at work. Senior consultant John Peel contributed to the programme while one of ELAS's clients was used as a case study,

demonstrating how even a small business can save thousands of pounds by clamping down on workplace absenteeism.

BBC Radio Five Live

Building on its reputation as the nation's experts on tackling workplace absenteeism, ELAS' head of consultancy, Peter Mooney, was interviewed on BBC Radio Five Live's morning

phone-in programme as it discussed National Sickie Day. Peter explained why the first Monday of February is the most likely day in the year for lazy workers to ring in sick, and also commented on what businesses can do if they suspects one of their staff is feigning illness.

The Independent

The UK national newspaper ran

an article looking at how a combination of post-Christmas blues, the seemingly distant Summer and Mondayitis make the first Monday in February the most common day for lazy workers to take off 'sick'. The article refers to how more people were now being caught out as a result of expert software developed to track absenteeism.

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