

@ ELAS Newsletter

EMPLOYMENT LAW
ADVISORY SERVICES LTD



October 1st - Red Tape Day

So many new regulations come into force on October 1, it has already been dubbed Red Tape Day.

New regulations on age discrimination (left) are among the most significant and wide-ranging changes to employment law in decades.

As well as affecting the date workers retire, the legislation could affect everything from who they choose to promote to the way companies advertise for new staff.

October 1 also sees the introduction of new regulations governing fire safety (page 4), which replaces around 100 previous fire safety laws.

Most importantly, it means employers have a duty to ensure the safety of all their employees, as well as any visitors to their premises.

New family-friendly laws (page 2) come into effect, extending the rights and responsibilities of anyone expecting a baby on or after April 1, 2007.

Finally, the national minimum wage increases as follows:

- For workers aged 22 and over, the minimum wage will rise from £5.05 to £5.35;
- For workers aged 18-21 and those aged 22 and over, doing accredited training in the first 6 months of employment, it will rise from £4.25 to £4.45;
- For workers aged 16 and 17, the minimum wage will increase from £3.00 to £3.30.

One of the most significant changes in employment law for years finally comes into force on October 1 – with many businesses yet to address the issue within their workplace.

According to the Department of Trade and Industry, no fewer than 8,000 Tribunal claims will be made under the new law each year.

In short, the Employment Equality (Age) Regulations 2006 and The Employment Equality (Age) Regulations (Northern Ireland) 2006:

- Prohibit age discrimination in recruitment, promotion and training;
- Set a default retirement age of 65;
- Remove the upper age limit for unfair dismissal and redundancy rights;
- Introduce a new right for employees to request to work beyond retirement age;
- Introduce a new requirement for employers to give at least six months' notice to employees about their intended retirement date;

- Allow benefits which recognise loyalty and experience to continue;
- Provide exemptions for many age-based rules in occupational pension schemes;
- Remove the lower and upper age limits in the statutory redundancy schemes, but leave the current age-banded system in place; and
- Remove the age limits for statutory sick, maternity, paternity and adoption pay.

Moreover, as with other discrimination claims, the maximum award against those found guilty at Tribunal is uncapped.

In the short term, as of October 1, employers must comply with transitional arrangements to ensure retirement dismissals are fair and employers are protected from unnecessary or unfair dismissal.

These arrangements stipulate the length of notice given to any member of staff intending to retire between October 2006 and April 2007.

Employees will have the right to request that they be allowed to work beyond retirement age and can ask not to be retired even after their contract has been terminated, providing their request is made within four weeks.

Employers should remember that employees leaving on retirement are subject to the normal regulations on dismissal. Not following the correct procedure, therefore, can give rise to claims for unfair dismissal.

After April 1, 2007, those retiring will be subject to the full retirement procedure, which stipulates that employers should notify staff of their intended retirement date between six and 12 months in advance.

Assuming they have been properly notified, any employee who wants to continue working must make their request at least three months before the proposed retirement date.

Employers must consider all requests not to be retired, while the employee has the right to appeal against any decision.

For further information about age discrimination legislation, contact the ELAS Consultancy Team.

Family friendly laws are changing... again!

Changes to maternity, paternity and adoption leave come into force in October, affecting anyone whose expected week of childbirth (or adoption) is on or after April 1, 2007.

The Maternity and Parental Leave, etc. and the Paternity and Adoption Leave (Amendment) Regulations 2006 remove the length of service conditions for additional maternity leave so that those applying for ordinary maternity leave also qualify for the additional leave.

The Regulations mean that an employee taking additional leave who wants to return early will, from April 1, have to give eight weeks' notice instead of four.

They also introduce a new provision entitling employers to make reasonable contact with an employee while she is on maternity leave - although what amounts to be reasonable contact will be subject to guidance from the Department for Trade and Industry, which is yet to be published.

As part of the same provision, an employee may carry out up to ten days' work for her employer during her Statutory Maternity Leave, without bringing that leave to an end.

There is no right for employers to demand such work is undertaken, nor for employees to do such work. The Regulations simply set out that if any work is undertaken, it will not extend the Statutory Maternity leave period.

The Regulations also remove the exemption allowing employers with five members of staff or fewer not to hold posts open for staff on additional maternity leave without being found guilty of automatic unfair dismissal.

In addition to these Regulations, further changes are introduced by the Work and Families Act 2006, which brings a package of rights and obligations for both employers and employees.

As with everything, the detail will be in the regulations which, on this occasion, are yet to be published.



The broad scope of the legislation, however, is that it will extend maternity and adoption pay from six to nine months from April 2007, as an initial step towards providing a year's paid leave.

The right to request flexible working will also be extended to carers of adults and will give employed fathers a new right to up to 26 weeks' additional paternity leave, some of which could be paid if the mother returns to work.

Finally, there will be measures to help employers manage the administration of leave and plan ahead with greater certainty from April 2007, helping improve communications between employers and employees during maternity leave.

For further information please contact the ELAS consultancy team.

Three Month Time Limit

Since October 2004, claimants have had the benefit of extending a three month time limit for filing their grievance by a further three months.

As long as the grievance is lodged within a month of the normal limit expiring, claimants are entitled to a further three months to submit their claim.

The Employment Appeal Tribunal, in the case of *Rainbow International v. Taylor* (2006), recently handed down a judgment dealing with these time limits.

In this case, the claimant resigned on June 20, 2005, and filed a claim for unfair constructive dismissal on December 20.

As the claimant had lodged a grievance within one month of the normal three month time limit expiring, both parties accepted that the extension applied in respect of his claim.

The time limit for filing the claim was consequently extended by a further three months.

The respondent, however, then argued that the claim should have been filed not on December 20 – but on December 19.

The Employment Appeal Tribunal, however, held that the way in which Regulation 15 was worded did not suggest the extension should be calculated from the day before the effected date of termination and consequently, the claim had been submitted in time.

Employers face paying for sleeping staff

Many organisations require employees to sleep on the premises and be available for emergencies which may arise during the night.

This has not previously been regarded as working time for which employees were entitled to be paid.

However, this is now no longer the case.

In *William Charles Anderson v Jarvis Hotels Plc* (2006), a hotel guest care manager was required to sleep over several nights each week.

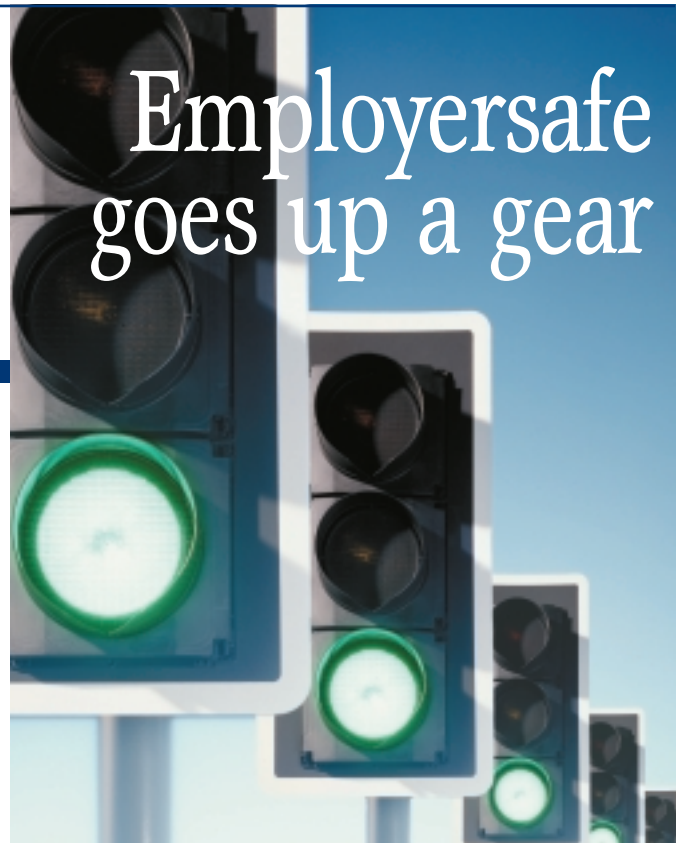
As the respondent only required the claimant to attend to emergencies such as fires or floods, the hotel argued the claimant was not entitled to any payment in respect of the sleep-over period.

The Employment Tribunal agreed, finding that the claimant was not at the respondent's disposal during periods of sleep-over, and so was only entitled to be paid if he carried out any work.

But the Employment Appeal Tribunal reversed the decision and held that being present on the premises was what the claimant was employed to do.

This case has major implications for employers who require staff to sleep on the premises and be available for work as and when required.

The National Minimum Wage should therefore be paid during 'sleep-over' periods and not just the actual time spent working.



Employersafe goes up a gear



ELAS's revolutionary new accreditation scheme is set for launch.

Employer of Excellence is the first scheme of its kind to be monitored around the clock, cutting the need for cumbersome application forms and on-site inspections.

By using Employersafe Intelligent Software as the key tool to achieve accreditation, companies can ensure they always follow best practice.

Once accredited, companies can use this logo on letterheads, marketing materials and websites as a clear symbol of their commitment to staff welfare.

Moreover, accredited firms can expect to see an increase in employee morale, boosting staff retention.

And because Employersafe uniquely links to ELAS consultants, we can verify that you are meeting the highest standards of legal knowledge and common sense.

Employersafe, ELAS's unique brand of intelligent personnel software, is now better than ever thanks to a number of major updates to its capabilities.

Since the system was launched last year, hundreds of clients have used it to help manage all areas of red tape and employment law.

Particularly, scores of users have come to rely on its ability to clamp down on absenteeism by identifying workers who only fall ill around weekends or major sporting events.

Now, however, those capabilities have been enhanced, while a number of new features have also been added, to take the software's capabilities to a new level.

At the heart of the updates is a new absence management module which highlights all the information a manager needs to properly monitor and manage all types of absence – from occupational health and illness to holidays.

And by linking the software to ELAS's new website, Employersafe users can access an even greater array of video tutorials, advice documents, case law and updated policies – all of which can be updated around the clock.

It even links into our new accreditation scheme, Employer of Excellence, and makes it easy not only to apply, but to maintain membership.

"The new absence management capabilities really show any employer the big picture about absence in the workplace," said Pam Rogerson.

"They may know that they have more people on holiday in August, but this gives them the hard, quantifiable figures and management techniques they need to optimise the performance of their workforce."

The software even gives them advice on management techniques – such as suggesting questions for a back-to-work interview – to help employers make the most of this new information.

"Employersafe has always contained a mine of information for users. By linking the program to our website, we can offer them so much more, and update it all in real time," Pam added.

"It also means that all the contracts and other documents we draw up for clients are available at the click of a button, slicing through any delays caused by sending paper documents through the post."

For Employers of Excellence, the software continuously monitors how well you are meeting the requirements of the scheme, feeding the information back to ELAS over the Internet and alerting us if you are experiencing any difficulties.

Website adds to dynamic ELAS service

The way ELAS appears on the Internet has changed.

As part of the company's ongoing commitment to enhancing levels of customer service, we have launched an interactive new website.

And rather than simply showcase our services to visitors and prospective clients, the new site - www.employment-law.uk.com

- has been designed as an interactive tool for existing clients.

Armed with their unique membership details, clients can gain secure access to a wide range of features, enabling them to download current and - in some cases - confidential information 24/7.

As well as valuable updates on forthcoming and changing

legislation, the site's secure Client Area also features specially prepared training videos. Latest documents such as contracts of employment and health and safety policies can also be drawn off the site, safe in the knowledge that they are right up to date.

Meanwhile, the Message Centre allows clients access to secure messages from the ELAS advice team.

When linked to Employersafe, through its own new online facilities, the site becomes an even more valuable management tool.

ELAS will be contacting clients in the near future to issue user instructions so that all clients can access their private log-in area securely.

Fire Safety - How to stay on top of ever-changing laws

Among the various laws coming into force in October is the Government's Regulatory Reform (Fire Safety Order) 2005.

The Order sets out employers' duties, from fire safety to enforcement procedures, offences and appeals.

Crucially, there is a general duty on employers to be aware of the Act's requirements and ensure the safety of all employees, contractors and visitors on their premises.

A fire and emergency plan needs to be in place and, in the event of a fire, everyone must be communicated to in some way that alerts them.

Inspectors can be sent in by authoritative bodies such as the Health and Safety Executive or local fire and rescue authorities to ensure provisions are being complied with or issue enforcement or prohibition notices.

Those who breach the Order could face criminal charges - leading to prison sentences for those responsible for health and safety.

In short, the Order requires:

- Risk assessments to be carried out and principles of prevention applied;
- Fire safety arrangements to be made and risks for dangerous substances eliminated or reduced; and

- Emergency routes and exits to be provided.

It also sets out procedures for dealing with serious and imminent danger, as well as additional emergency measures regarding dangerous substances and maintenance schedules for premises and firefighting facilities.

Finally, there is a section regarding safety assistance detailing how to provide employees with information and adequate safety training.

It is imperative that employers either familiarise themselves with the Act or appoint an appropriate person or body to ensure their compliance.

All companies, therefore, must undertake a specific fire risk assessment - which ELAS provides as part of its Health & Safety Service

In addition, ELAS is the only company to offer Employersafe Intelligent Health & Safety Software as part of its service - giving companies instant access to the relevant information regarding fire safety precautions, and alerting employers to the various checks and inspections they need to do to ensure the safety of all persons.

For more information about the new fire safety regulations, or to arrange a visit, please contact Leon Teasdale on 0161 785 2000.

Updates in Health & Safety law

Smoking Ban:

Employees could be banned from smoking at the entrances of their workplaces.

The forthcoming smoking ban in England may be extended to apply to non-enclosed areas - such as bus shelters and entrances to public buildings and workplaces - where there is a risk of harm from second hand smoke due to the grouping of people.

Bullying:

Women are significantly more likely to be bullied at work than men, a new survey reveals. The DTI figures reveal that 4.9 per cent of women have experienced bullying in the last two years, compared

with only 2.8 per cent of men. In total, almost a million employees have suffered workplace bullying, while one in 14 feel they have been unfairly treated. Under the Management of Health and Safety at Work Regulations 1999, employers should carry out a suitable and sufficient risk assessment on workplace bullying and harassment.

Workplace Transport:

The Health and Safety Executive (HSE) has reminded employers of the importance of managing workplace transport properly after a 60-year old cleaner died in an accident involving a lorry at a manufacturer's yard.

The employer was ultimately fined £20,000 and ordered to pay £4,500 in costs. Many companies have car parks or yards that are not managed and, in many cases, there are no road markings, no safe pedestrian routes, no information signs or speed limits and no high-visibility equipment for workers. The HSE has now reminded employers that issues such as this could lead to them being prosecuted for not ensuring a duty of care to their employees and others.

Risk Assessment:

The HSE has also revamped its risk assessment guide to make the process more practical. The new version of Five Steps

to Risk Assessment has been updated to make it easier for business people - and not just health and safety professionals - to use. The leaflet will be sent with your risk management report in the near future.

Falls from Height:

A 16-year-old who worked for a supermarket broke his ankle when he fell through a ceiling grid, after being asked by the deputy manager to retrieve keys locked in the stores office by climbing over an internal partition wall. The ceiling grid gave way, causing him to fall three metres to the ground. His employers were fined £6,000 and ordered to pay £3,053 in costs.



Ask the Expert...

I have a number of employees who are members of different religious groups. Some have asked for time off to pray and to attend other religious occasions. Am I obliged to give them time off for these reasons?

Employers have a duty to allow employees a reasonable amount of time off for religious or cultural observance - but can request that employees use their holiday entitlement for such time off.

If an employee has used all of his or her holiday entitlement, then the employer is obliged to offer unpaid leave, but this is dependant upon the needs of the business.

Requests should be accommodated wherever possible and only refused for genuine business reasons.

The Commission for Racial Equality's Code of Practice, which offers guidance on the Race Relations Act, states that "work requirements would generally be unlawful if they have a disproportionately adverse effect on particular racial groups and cannot be shown to be justifiable".

Consequently, if an employer's refusal is not justified, then the employee could be liable for a claim for religious and/or race discrimination.

It is advisable for employers to obtain information regarding an employee's religion prior to the commencement of their employment so arrangements can be put in place to accommodate them.

It is reasonable for an employer to request that an employee retains some of his/her holiday entitlement for his/her religious or cultural observance. Alternatively, flexibility in the arrangement of working hours, shifts and rotas should be offered.



**Giles Ridgeway LLB (Hons)
Employed Barrister**

Giles joined ELAS in January 2001 as an Employment Law Consultant.

He has a wealth of experience in conducting Tribunals on behalf of employers.

In addition, he has extensive knowledge of all aspects of employment law, particularly Transfer of Undertakings regulations and discrimination.

ELAS team expands



Steve Brockley

At ELAS we have recently welcomed four new consultants onto our personnel and health & safety teams - significantly improving our already excellent client to consultant ratio.

Among the new faces is Steve Brockley Tech SP, who has taken up his role as a health and safety consultant. Having already gained years of valuable experience working in a variety of sectors, including engineering and construction,

he is adept at quickly analysing clients needs and tailoring their health and safety policies and procedures around them.

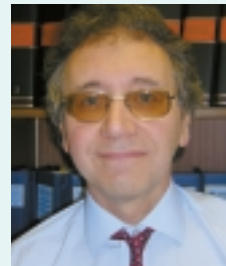
Fellow new recruit, Mike Laycock Dip.OSH CMIOSH I.Eng MIET, also brings a wealth of experience to our health & safety team. His professionalism is reflected in compiling policies and various assessments for a multitude of organisations and delivering a number of training courses.



Mike Laycock

Mike is also registered with the Engineering Council due to his chartered status.

On the employment law side, John Davis joins ELAS from a firm of Liverpool solicitors, where he has worked for the past 15 years. John's career began as a barrister working for electronics and defence systems companies. He began to specialise in employment law in 1994, working for a number of major high street clients, primarily in the field of



John Davis



Dawn Hughes

respondent employment tribunal work.

In addition to this, John has been involved in drafting employment handbooks, employment terms and conditions and contracts of employment.

Law graduate Dawn Hughes joins ELAS from a large criminal litigation practice in Preston, Lancashire, where her work centred around criminal law.



EMPLOYMENT LAW
ADVISORY SERVICES LTD



...in the News

FINANCIAL TIMES

The world-famous financial newspaper reported on the fact that wayward staff "can run, but they can't hide" - thanks to ELAS.

Following advice from union Amicus that workers should take sickies to watch the football, the FT warned staff to check whether their employers were using ELAS's Employersafe Intelligent Personnel Software first.

Demand for the software - which can spot which workers only fall ill on Fridays or England matchdays - had soared as summer approached, the article reported.

Bloomberg TV

ELAS consultant John Peel was interviewed for an article on Bloomberg TV, the global business TV channel, on the dangers posed to employers by the World Cup. Among the tools used by many bosses was ELAS's unique Employersafe Intelligent Personnel Software, which can spot which workers only ever fall ill on or around major sporting events, John said.

The Independent

The Independent pondered life in a CV-less world, following an ELAS survey which found that almost half of SMEs no longer demanded one every time they hire a new member of staff. In a world of email and word of mouth recommendation, the traditional resume had had its day, it claimed.

Irish Independent

An article in this Republic of Ireland newspaper reported on

how World Cup fever was gripping competing nations, up to two weeks before the tournament began.

Among the figures the article cited were statistics from ELAS which showed that as many as four in five bosses were planning to get tough on errant staff.

Evening Standard

Writing in the capital's agenda-setting evening newspaper, columnist Francis Wheen stated that the British economy would survive a little indolence during the World Cup. He also questioned whether the 80 per cent of bosses ELAS found were preparing to clamp down on lazy staff had ever taken days out of the office on corporate hospitality.

Independent on Sunday

The Independent on Sunday spent the weekend before the tournament began looking at the various ways the World

Cup affected Britons - from examples of delirious optimism to the predictions of trouble brewing.

Alongside the flag waving and Subbuteo figures of Wayne Rooney on crutches, it cited evidence from ELAS that 80 per cent of employers were planning to clamp down on workers who rang in sick on matchdays.

North West Business Insider

ELAS consultant Pam Rogerson was asked to respond to a reader's query regarding the number of applicants not automatically sending CVs when applying for jobs. Pam was able to cite survey figures showing that, not only were candidates no longer using CVs, but many employers no longer sought them. While they may be seen as old-fashioned, Pam urged employers to ask for the documents as the "absolute starting point" for employers seeking to defend any tribunal claim.

Liverpool Echo

The main evening newspaper across Merseyside devoted its business page to a story about how Employersafe Intelligent Health and Safety Software could save lives by alerting the ELAS team when clients risked breaching their responsibilities.

By breaking complex procedures and issues into simple tasks, the software also makes working within the law child's play.

BBC Radio Berkshire

In an interview on BBC Radio Berkshire, Peter Mooney advised businesses that no matter what stance they planned to take during events such as the World Cup or golf's British Open, the key was to lay

down the rules in advance.

Century FM

Consultant John Peel told listeners of this regional commercial radio station how a hi-tech piece of software developed by ELAS now gave employers the ability to spot who was really ill, and who was pulling a sickie to enjoy a long weekend or watch a major sporting event.

Radio City

Following the award of £800,000 in a sexual harassment case, ELAS were invited to take part in a debate on Liverpool's leading commercial radio station, chaired by former GMTV presenter Esther McVey.

The Grapevine

The specialist professional recruitment magazine looked at how a wide range of small and medium sized businesses were taking large risks by appointing new workers without seeing a traditional CV.

Newcastle Journal

The North East's leading local morning newspaper looked at how the World Cup would boost retailers in the region. The flipside, according to figures from ELAS, was that other employers were looking to keep a tight rein on skiving staff and were even planning to force them into work the day after the final if England had gone on to win.

Manchester Evening News

As part of a regular column in the MEN, health and safety consultant Wayne Dunning advised SMEs in the region on the implications of the forthcoming changes in fire safety laws.

HOW TO CONTACT US:

Employment Law Advisory Services Ltd, Lancaster House, Old Wellington Road,
Manchester M30 9QG Tel: 0161 785 2000 Fax: 0161 787 7335
email: info@employment-law.uk.com www.employment-law.uk.com