

JUNE 2007

@ELAS Newsletter

EMPLOYMENT LAW
ADVISORY SERVICES LTD



Laws banning smoking in the workplace come into force on July 1 with employers who breach the regulations facing hefty penalties.

The crackdown has already been implemented in Scotland and Wales.

The Health Act 2006 will introduce legislation requiring most enclosed

workplaces to become smoke free to protect workers from second hand smoke.

The key points of the legislation are:

- public transport and work vehicles used by more than one person have to be smoke free;
- no smoking signs will have to be displayed in all

smoke free premises and vehicles;

- staff smoking rooms and indoor smoking areas will no longer be allowed – meaning anyone who wants to smoke will have to go outside;
- managers of smoke free premises and vehicles will have legal responsibilities to prevent people from smoking.

Failure to comply with the new smoke free law will be regarded as a criminal offence with fixed penalty notices and maximum fines for each offence as follows:

- Smoking in smoke free premises or work vehicles: A fixed penalty notice of £50 (reduced to £30 if paid in 15 days) imposed on the person smoking or a maximum £200 if prosecuted and convicted by a Court;

- Failure to display no smoking signs: A fixed penalty notice of £200 (reduced to £150 if paid in 15 days) imposed on managers or occupiers of smoke free premises or vehicles, or a maximum fine of £1000 if prosecuted and convicted by a Court;
- Failure to prevent smoking in a smoke free place: A maximum fine of £2500 imposed on whoever manages or controls the smoke free premises or vehicle if prosecuted and convicted by a Court. There is no fixed penalty notice for this offence.

Local authorities will have the responsibility of enforcing the new laws in England and are set to appoint officers to ensure compliance.

If you require any further information on the new smoking legislation, please contact our Helpline on 0161 785 2000

EMPLOYERS' SIGN OF THE TIMES

The regulations will require all smoke free premises to display a no smoking sign in a prominent position at each entrance that:

- is the equivalent of A5 in area;
- displays the international no smoking symbol in colour, a minimum of 70mm in diameter;

- carries the words "No smoking. It is against the law to smoke in these premises".

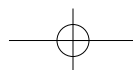
The words "these premises" may be tailored to suit the organisation by inserting the name of the company, the name of the building or the name of the organisation.

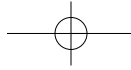
The regulations also set out that a no smoking sign that simply displays the

international no smoking symbol in colour, a minimum of 70mm in diameter, is the minimum requirement at entrances to smoke-free premises which are for staff only, e.g. the rear door of a building which is not available to the public, providing that at least one A5 size sign with the words, as set out above, is displayed on the premises.

The international no smoking sign in colour, a minimum of 70mm in diameter, must also be displayed in vehicles which are clearly smoke-free vehicles.

Any person with management responsibility for a smoke-free vehicle has a legal duty to display a No Smoking sign in each enclosed compartment that can accommodate people.





Government plans increase in paternity leave and pay

The Government last month published its consultation paper on the implementation of its promise to increase paternity leave and pay as set out in the Work and Families Legislation.

It is the aim of the Government to bring in Additional Paternity Leave and Pay alongside the extension of Statutory Maternity Pay (SMP), Maternity Allowance (MA) and Statutory Adoption Pay (SAP) from 39 weeks to 52 weeks by the end of this current Parliament.

The consultation states that the earliest date that Additional Paternity Leave and Pay will be implemented will be for babies due on or after 5th April 2009, but this is not a firm date for introduction.

Under the proposals, fathers will be allowed a half share of their partner's year long maternity leave. The term father is used throughout the consultation documents, but Additional Paternity Leave and Pay will also be available to partners and civil partners of mothers and members of adopting couples who are employed and where there is an entitlement to Statutory Adoption Leave and Pay. These proposals will provide a greater choice for parents in how they divide their childcare responsibilities between them. The proposals will also enable employed fathers to have a greater involvement in raising their child during the first year of the child's life.

In terms of the proposed administration, the Government's preferred approach to the administration of Additional Paternity Leave and Pay is for both the mother and father to self-certify to the father's employer, key personal facts affecting the father's eligibility.

This will place the onus of responsibility on the mother and father alone for

providing the necessary information to a set timescale. It is not anticipated that the father's employer will have to carry out checks with the mother's employer as part of this process, although it is accepted that an employer will require sufficient information to check their employee's eligibility and to determine the period of Additional Paternity Pay and Leave, and to calculate the amount payable.

It is on points like these that the Government is consulting and responses have to be submitted by 3rd August 2007.

We feel it appropriate to draw your attention to these proposals now so that you are aware of the proposed legislation and so that you can consider the effect on your businesses well in advance of the introduction of the legislation.

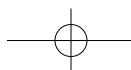
In practice, the mother should notify her employer that she wishes to start her maternity by the end of the fifteenth week before her expected week of childbirth, unless this is not reasonably practicable.

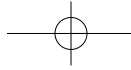
By the same date, the father notifies his employer that he wishes to take Ordinary Paternity Leave, and also that he wants to take Ordinary Statutory Paternity Pay, the notice for this being a minimum of 28 days before payment, for which there must be a declaration of family commitment. The father also provides evidence of entitlement by way of a self-certificate, for which a form will be available.

Statutory Paternity Pay will be divided into Ordinary Statutory Maternity Pay and Ordinary Paternity Leave, which will be the same as the existing period of Statutory Paternity Leave, i.e. one week or two weeks.

If the father wishes to take Additional Paternity Leave and Additional Statutory Paternity Pay, he has to give a minimum 8 weeks notice, which he will do by completing the form, which will become available. At the same time, the mother will notify her employer that she wishes to return to work early, again a minimum 8 weeks notice.

If any one wishes to contribute towards the consultation, full details can be obtained from www.dti.gov.uk





The Health & Safety team at ELAS keeps its finger on the pulse of important court cases and other developments to ensure its clients are constantly updated.

During the past few weeks, there have been a number of significant cases which are highlighted here:

SECURE YOUR LOADS

The Health and Safety Executive (HSE) warned road haulage and steel fabrication companies of the importance of properly securing heavy loads following the death of a driver.

Steel fabrication company, McDonald & Ross Ltd, and road haulage sole trader Ron Boyd Trading were fined £37,500 at Edinburgh Sheriff Court.

Nicholas McKellar, 45, died after a steel beam weighing almost 1000kg fell from a vehicle as it was being unloaded in October 2005.

Both pleaded guilty under the Health & Safety at Work etc Act 1974.

ASBESTOS WARNING

Companies have been told to take extra care when demolishing buildings containing asbestos cement sheets.

Wye Valley Demolition Ltd of St Weonards, Hereford, was fined £6,000 and ordered to pay costs of £13,621 following the release of asbestos during the demolition of a former grain store in Bodenham in June 2004.

Wye Valley Demolition pleaded guilty to breaches of Regulation 10 (1) and 15 of the Control of Asbestos at Work Regulations 2002.

COUNCILS WARNED AFTER BOY'S DEATH

Councils have been warned to ensure that repairs are carried out promptly to communal areas of their properties following the death of a 13-year-old boy.

Ryan Dean died on a stairwell that was allowed to remain unsafe for over six months.

The London Borough of Newham was fined £125,000 and ordered to pay costs of £6,000 after pleading guilty to a breach of Section 3(1) of the Health & Safety at Work etc Act 1974.

TIGHTEN UP IN THE BOARDROOM

The chairman of the Health & Safety Commission (HSC) has called on leaders in the chemical and major hazard industries to aim for a stronger health and safety agenda in the boardroom.

Bill Callaghan, chairman of the HSC, said many lessons had been learnt from high profile incidents such as Buncefield.

He added: "The industry has a clear responsibility to ensure that risks are properly controlled to reduce the chances of incidents of this nature happening again."

NOISE ALERT AT CLUBS AND BARS

New research has revealed that 68 per cent of employers in the music and entertainment industry are unaware of the need to

comply with new Control of Noise at Work Regulations 2005.

The Royal National Institute for Deaf and Hard of Hearing People (RNID) carried out the survey ahead of the new regulations coming into force in April next year.

More worryingly, 55 per cent of employers do not currently have hearing protection available to their workers.

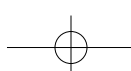
IMPORTANCE OF RISK ASSESSMENTS

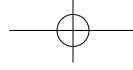
The HSE has highlighted the importance of risk assessments and dispelled the idea that they must always be "long and complex".

The organisation says that for most organisations, simple bullet points will work well.

It also warns employers that "paperwork never saved anyone" and that the risk assessment such be seen as a "means to an end, not an end in itself".

For more information on the above or any other health & safety issue, contact ELAS on 0161 785 2000.





Case Study

Employersafe was featured on ITV's Tonight with Trevor McDonald programme when it tackled the thorny issue of workplace absenteeism.

The programme interviewed a manufacturing client of ELAS's highlighting how much damage absenteeism was doing to the business.

But within weeks of installing the software, the company saw a dramatic transformation in its fortunes.

Employersafe personnel software slashed absenteeism by over 50 per cent, increased productivity and saved the company more than £15,000 in six months.

Companies are discovering that the simple "traffic light" system is helping them overhaul the way they operate. As you'd expect, a red light means an employer is at risk, amber highlights that something needs attention, while a green light confirms that you are safe.

The software provides hundreds of firms with a step-by-step guide to a multitude of personnel and health and safety issues, ensuring compliance and traceability at all times.

Employersafe, ELAS's unique software for personnel and health and safety, continues to go from strength to strength.

Hundreds of companies are now using the technology to help them run their businesses more effectively and, crucially, stay within the law.

The huge interest has come from a number of different sectors including manufacturing, building and construction, retail, transport, engineering, care homes, hotels and education.

First to be launched was Employersafe Intelligent Personnel Software which provides employers with a range of offerings including:

- Comprehensive employee details;
- Contracts of employment;
- Discipline and grievance procedures;

- Attendance and absenteeism management;
- Pro-active warning system;
- Management reports.

This successful launch was followed by the unveiling of Employersafe Intelligent Health and Safety Software. This provides employers with:

- Step-by-step guide to risk assessments;
- Fully audited information;
- Centralised paperwork;
- Management of training for company health & safety representatives.

ELAS's Pam Rogerson said: *"There has been a fantastic response to the roll-out of Employersafe.*

"It is the most advanced, pro-active HR management system in existence and for many of our clients it is now an integral part of the way they run their businesses.

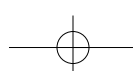
"The clients we are working with cover virtually every industry sector because a lot of the issues are the same for every employer.

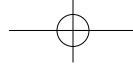
"One satisfied employer told us recently that Employersafe has given him simple peace of mind – total reassurance that everything was being done by the book."

The revolutionary technology has been well received within the media with publicity in the Financial Times, Daily Telegraph and Daily Express as well as on the Tonight with Trevor McDonald programme.

ELAS runs an "Employer of Excellence" accreditation scheme based around the successful implementation of Employersafe. Once accredited, firms can use the logo on letterheads, website and marketing collateral.

For more information or a free interactive demonstration, please call 0161 785 2000.





Ask the Expert...

I have just received a letter from a solicitor who is acting for one of my employees. The letter mentions a number of issues that the employee claims to have, but she has not said anything to me personally. Should I just ignore it?

Not at all! A letter from a solicitor has been held by a Tribunal to constitute a grievance letter under the Employment Act 2002 (Dispute Resolution) Regulations 2004.

You must, therefore, follow the statutory grievance procedure, and should write to the employee inviting them to a grievance meeting as soon as possible.

The employee should be given the right to be accompanied by either a work colleague or a recognised Trade Union official. A manager should conduct the meeting with someone else present to take minutes; a more senior manager should be reserved for any appeal hearings and therefore should not be involved at this stage.

At the meeting the employee should be given the opportunity to say what their grievance is and you may find that it is necessary to adjourn to investigate matters before a decision can be made.

Once you have reached a decision, this should be communicated to the employee in writing and they should be given the right to appeal. You should also provide a copy of the minutes of the meeting. If you have rejected the grievance you should inform the solicitor of that in writing.



John Davis, LLB (Hons), PG Dip Business Studies

John joined ELAS in August 2006 from a firm of Liverpool solicitors, where he had worked for 15 years.

His career began as a barrister working for electronics and defence systems companies. John began to specialise in employment law in 1994, working for a number of high street clients, primarily in the field of respondent employment tribunal work.

Email your questions for consideration to: questions@employment-law.uk.com

ADVANCE WARNING - National Minimum Wage

From 1st October 2007, the National Minimum Wage will increase as follows:-

- For workers aged 22 and over, from £5.35 to £5.52.
- For workers aged 18-21 and those aged 22 and over, doing accredited training in the first 6 months of employment, from £4.45 to £4.60.
- Workers aged 16 and 17, from £3.30 to £3.40

Maternity Pay v Bonuses

Employees on maternity leave are not entitled to a bonus payment unless it relates to work done prior to the start of maternity leave.

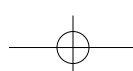
However, women are entitled to any attendance related bonus payments, relating to the compulsory maternity period. The situation becomes complicated when employers operate discretionary bonus schemes that are not classed as pay, such as one-off profit related bonuses.

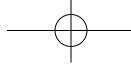
If this is payable to all employees, then withholding this type of bonus from women on maternity leave is likely to constitute sex discrimination.

It follows that any discretionary bonus, not classed as wages or salary will almost certainly be payable for the ordinary maternity leave, but there is an argument to withhold discretionary bonus payments during the additional maternity leave because employee benefits do not apply during additional maternity leave unless the contract of employment says otherwise.

The recent extension of maternity pay being payable for up to 39 weeks does not deflect from the fact that ordinary maternity leave and additional maternity leave are still 26 weeks long

For more information ring our advice line on 0161 785 2000.





PAGE SIX

JUNE 2007



The Daily Telegraph

Hundreds of employers reported how staff absenteeism was rife during the Easter heatwave.

ELAS's John Peel told the Daily Telegraph: "One man called in on Friday saying his cat needed an emergency operation. But when he made the same excuse three days later, his boss got suspicious."

BBC North West Tonight

ELAS lawyer Peter Mooney was interviewed as part of a feature on workers queuing outside a Salford Council depot for work in scenes reminiscent of the docks in the 1930s.

Agency staff were spotted arriving for work as refuse workers and road sweepers only to be given £20 if none was available.

Peter said: "It was one of the more unusual stories I have commented on but involved a number of serious issues concerning the rights of workers turning up looking for work."

Zest

Job applicants had no option but to be 100 per cent honest with potential employers when asked to detail personal health information, ELAS's John Peel told Zest magazine. He told readers: "If you make a false declaration, you could be sacked and even prosecuted."

Financial Times

ELAS's Peter Mooney was interviewed for an article in the Financial Times examining the issue of internet gambling in the workplace. Peter highlighted how effective monitoring of staff internet use was becoming a growing concern of management.

The Scotsman

ELAS warned bosses of the complexities surrounding dealing with staff absenteeism after a Scottish hairdresser called in sick – only to be spotted enjoying a day at the races a few hours later.

BBC Radio Scotland

The same issue of the hairdresser enjoying the day at the races led to BBC Radio Scotland interviewing ELAS's Peter Mooney, a regular contributor to the station.

The Impartial Reporter, Enniskillen

The Irish weekly newspaper reported how a growing number of employees were blaming satellite navigation systems for arriving late at the office. An ELAS survey showed that four of the 10 most common excuses for lateness revolved around modern technology.

Liverpool Echo

As part of our regular column in Liverpool's biggest selling paper, ELAS answered the questions of concerned employers on all aspects of employment law and health and safety legislation.

Manchester Evening News

Manchester's top newspaper continued to profile the views of ELAS's leading lawyers in a series of regular columns in the MEN's business section.

HOW TO CONTACT US:

Employment Law Advisory Services Limited, Charles House, Albert Street,
Eccles, Manchester, M30 0PW Tel: 0161 785 2000 Fax: 0161 787 7335
email: info@employment-law.uk.com www.employment-law.uk.com

