

LEGAL UPDATE

August 2008: Issue 11

VAB welcomes feedback on its services from customers and service users. If you wish to make a compliment, complaint or comment about the service you have received, please contact our main office for a copy of our procedure or send your comments in writing to:

If you wish to be added or removed from the database please call **01226 206294** with your request.

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Legal Surgeries 2008

The remaining legal surgeries planned for 2008 are as follows:

Thu 4th Sep
Tue 18th Nov

Please contact our office if you wish to book an appointment
Tel: 0845 231 1313



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Registered in England & Wales
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If you would like to receive this Legal Update in an alternative format, please contact us and we will try to meet your requirements. If you do not have access to internet facilities for seeking further information on a particular subject, please contact us so that we may obtain the information on your behalf.



TENDERING FOR CONTRACTS ENSURING COMMISSIONERS ARE AWARE OF YOUR SERVICES, AND YOU ARE AWARE OF TENDER OPPORTUNITIES

For those organisations who wish to contract for public service contracts, you are recommended to register your organisation and its services on SCMS, the Supplier Contract Management System, a regional web based system where statutory authorities will advertise their contracts and invite tenders. The system is being rolled out amongst local authorities, directorate by directorate, and will be the key access point to ensuring organisations connect with the tender opportunities that are available to it.

If your organisation would like further information about SCMS or would like practical support in registering, please contact Jane Jefferson or Ann Moffatt for assistance on 01226 286841 or 0845 231 1313

BANKING

Bank of Scotland, community banking scheme is recommended

Wolverhampton CSV have recently recommended the Bank of Scotland for Third Sector banking services. As is the case, many banks don't fully understand how companies with charitable objectives work. Wolverhampton CSV confirm that the Bank of Scotland has gone "beyond the call of duty" in the case of one particular group and they are in the process of recommending the bank to other groups.

Wolverhampton CSV (2008) *What's New*



EMPLOYERS LIABILITY CERTIFICATES

Display requirements are likely to change...

As part of the Department for Work and Pensions campaign to reduce the administrative burden on businesses by 25%, businesses will be able to display their employer's liability certificates electronically under proposals confirmed by the UK Government this month.

Employers are required to insure against liability for injury or disease to their employees arising out of their employment, and under the ***Employer's Liability (Compulsory Insurance) Regulations 1998***, have been required to keep copies of each certificate for 40 years! There is no current penalty for not retaining copies, however, there *is* a penalty of up to £1,000 for failure to display and provide a copy of a certificate to an inspector on request.

Watch this space for an update on when this changes...

CORPORATE MANSLAUGHTER

The ***Corporate Manslaughter & Corporate Homicide Act 2007*** is a further reminder that organisations *must* follow health and safety legislation. The new Act links to existing health and safety requirements, with the additional introduction of criminal liability for failures in the management of health and safety resulting in a fatality.

If you require further information or advice around health and safety, please contact Ann Moffatt or Jane Jefferson on 01226 286841 or 08450 231 1313





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DATA PROTECTION

Increased penalties for failure to comply

Russell Cooke have confirmed in a recent Legal Update that the Information Commissioner has been given new powers to impose financial penalties on data controllers where he is satisfied that:

- ◆ There is a serious breach of one of the eight data protection principles of the Data Protection Act 1998
- ◆ The breach was likely to cause substantial damage or distress
- ◆ The data controller knew or ought to have known that a breach would occur or would be likely to occur and cause damage or distress but failed to take steps to prevent it.

Russell Cooke (2008) *Monthly Legal Update: July*

For advice about adhering to the eight principles of data protection, please contact Jane Jefferson or Ann Moffatt on 01226 286841 or 0845 231 1313

GRIEVANCE

The bar of grievance continues to be lowered

In a recent case an employee submitted a complaint stating that if the complaint was not dealt with they would lodge a "formal grievance of racial discrimination under the Employment Act 2002".

As a result, the employer chose not to treat the complaint as a formal grievance under the grievance procedure.

A Tribunal later found that this was wrong and the employee succeeded in a claim for unfair treatment because the grievance procedure had not been followed.

If you are unsure when to follow the statutory grievance procedure, contact Jane Jefferson for advice on 01226 286841 or 0845 231 1313



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INSURANCE

For organisations seeking quotes for insurance, VAB can provide details of a new social enterprise insurance broker called CaSE Insurance. CaSE provide low cost insurance to charities and social enterprises, and return 40% of their profits to Charities through the Charities Aid Foundation.

Please contact our office if you wish to access CaSE's contact details in order to seek a quote.

This is not an endorsement of the services provided by CaSE. If you wish to seek any endorsement, please contact CaSE directly.

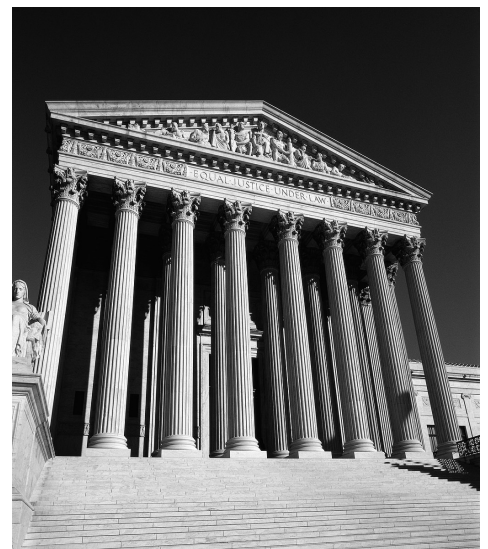
CASES: PUBLIC LAW

Judicial Review brought by Public Law Project

Two service-users of a not-for-profit BME women's group in Southall successfully brought judicial review proceedings against their local authority in relation to reductions in funding.

The legal challenge related to a failure to meet their general duty under the Race Relations Act and to follow their own Impact Assessment Guide.

Please contact our office on 01226 286841 or 0845 231 1313 for a full copy of the case article.





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REDUNDANCY PAYMENTS

Any organisation that employs staff should be a registered company or have some other suitable legal structure in order to reduce (provided other good legal practices are followed) personal liability for tribunal damage awards.

This is further reiterated in relation to redundancy and redundancy pay. If an organisation is not incorporated, and does not make redundancy payments to employees when they are due, payments cannot be recovered from the Government. In such cases responsibility for payment will lie *personally* with the group's committee.

For further advice in relation to redundancy or legal status, please contact Jane Jefferson on 01226 286841 or 0845 231 1313

ROGUE EMPLOYERS

Crackdown on rogue employers

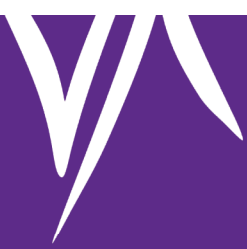
The Government is cracking down on rogue employers who abuse vulnerable workers.

The new strategy will introduce a single telephone helpline for vulnerable workers to report abuses to the Government's workplace enforcement agencies. In addition, a £6 million information campaign will raise awareness of employment rights and how to enforce them.

A new Fair Employment Board will be established to co-ordinate the work which will cover minimum wage, health and safety, employment agencies, and gang masters.

Barnett (2008) Employment Law Bulletin

For support in meeting your legal requirements in relation to employing a worker, please contact Jane Jefferson on 01226 286841 or 0845 231 1313



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MINIMUM WAGE RATES

The current minimum wage is:

- ◆ **£5.52** per hour for workers 22 years and over
- ◆ **£4.60** per hour for workers aged 18-21 years inclusive
- ◆ **£3.40** per hour for workers 16-18 years inclusive.

From **October 2008** this will change to the following:

- ◆ **£5.73** per hour for workers 22 years and over
- ◆ **£4.77** per hour for workers age 18-21 years inclusive
- ◆ **£3.53** per hour for workers age 16-18 years inclusive.

For support in meeting your legal requirements in relation to paying a worker, please contact Jane Jefferson on 01226 286841 or 0845 231 1313



TRIBUNAL COMPENSATION LIMITS

The current rates are reviewed each February:

Basic Award: £9,000 (maximum 30 weeks' pay at £330)

Compensatory Award: £63,000

Maximum Award: £25,000

For support in meeting your legal requirements in relation to employing a worker, please contact Jane Jefferson on 01226 286841 or 0845 231 1313



Human Resources Quality Standards

What are the benefits of quality standards?

Quality standards, particularly those around HR, demonstrate to your own staff and others that you are a good employer, and help you to recruit and retain employees and volunteers. Quality standards, some to a greater degree than others, demonstrate your corporate social responsibility. They will help you to adhere to legislation and best practices, help you to reduce sickness levels and increase productivity. Quality standards indicate a minimum level at which your organisation is operating in various business and social areas. This is attractive to funders, buyers, customers, prospective employees and volunteers.

Some of the standards and commitments...

Investor in People

The Investors in People standard provides a framework that helps organisations to improve performance and realise objectives through the effective management and development of their people.

The Investors in People Standard is based on three key principles:

Plan – Developing strategies to improve the performance of the organisation

Do – Taking action to improve the performance of the organisation

Review – Evaluating the impact on the performance of the organisation.

Payroll Giving Quality Mark

The Payroll Giving Award is a new scheme that recognises and rewards charities and businesses of all sizes for making Payroll Giving available to their staff. The quality standard comprises a certificate and logo, as well as Bronze, Silver and Gold Awards. The Bronze level is awarded to employers that achieve 1% employee participation in Payroll Giving; the Silver Award is awarded to employers that achieve 5%; and the Gold Award is awarded to employers that achieve 10% Payroll Giving and pay the administration charge, match donations **or** have promoted Payroll Giving during the previous year.

Continued over...



Mindful Employer

The Mindful Employer quality standard is an award that recognises employers who are positive about mental health. The Mindful Employer initiative is led and supported by employers and is aimed at increasing awareness of mental health at work and providing support for businesses in recruiting and retaining staff.

As a Mindful Employer, you will recognise that:

- ◆ People who have mental health issues may have experienced discrimination in recruitment and selection procedures. This may discourage them from seeking employment.
- ◆ Whilst some people will acknowledge their experiences of mental health issues in a frank and open way, others fear that stigma will jeopardise their chances of getting a job.
- ◆ Given appropriate support, the vast majority of people who have experienced mental ill health continue to work successfully as do many with on-going issues.

Employers will aim to:

- ◆ Show a positive and enabling attitude to employees and job applicants with mental health issues. This will include positive statements in recruitment literature.
- ◆ Ensure that all staff involved in recruitment and selection are briefed on mental health issues and the Disability Discrimination Act, and given appropriate interview skills.
- ◆ Make it clear in any recruitment or occupational health check that people who have experienced mental health issues will not be discriminated against and that disclosure of a mental health problem will enable both employee and employer to assess and provide the right level of support or adjustment.
- ◆ Not make assumptions that a person with a mental health problem will be more vulnerable to workplace stress or take more time off than any other employee or job applicant.
- ◆ Provide non-judgmental and proactive support to individual staff who experience mental health issues.
- ◆ Ensure all line managers have information and training about managing mental health in the workplace.

Continued over...





DEVELOPMENT



Positive about Disability

The Positive about Disability quality mark is an award that recognises employers who are positive about disability. As a Positive about Disability employer you will:

- ◆ Interview all disabled applicants who meet the minimum (essential) criteria for the post.
- ◆ Ensure a mechanism is in place to discuss, at least once a year, with disabled employees what improvements can be made to ensure that they can develop and make best use of their abilities.
- ◆ Make every effort to ensure that when an employee becomes disabled, they can stay in employment.
- ◆ Take action to ensure that all employees develop the appropriate level of disability awareness needed to ensure that all commitments work.
- ◆ Conduct an annual review of what has been achieved and plan ways to improve on them. This is reported to the Department for Work and Pensions.

Breast-feeding Friendly Award (available at through VAB)

The Breast-feeding Friendly Award is a quality mark that recognises employers who are positive about breast-feeding and making breast-feeding mothers welcome in their work places. As part of the Breast-feeding Friendly Award, employers and their staff will:

- ◆ Adopt the Breast-feeding Friendly Policy.
- ◆ Agree and adhere to the best practice requirements in relation to being breast feeding friendly.
- ◆ Attend Breast-feeding Awareness training and participate in the related workshops.
- ◆ Display the breast-feeding friendly welcome stickers on their premises.
- ◆ Pass a final assessment and further annual assessments to maintain the Award.

The Government issued a Green Paper in June 2007 consulting on its proposals, one of which is to give women the legal right to breast-feed in public. Working towards a standard such as the Breast-feeding Friendly Award will assist your organisation to meet this legal requirement should such proposals be introduced.

Continued over...





DEVELOPMENT



Breast-feeding Friendly Award Continued...

If your organisation is interested in working towards the Breast-Feeding Friendly Award, or would like to find out more about it please contact the team on 01226 242726

Work Wise Standard

The Work Wise Standard is a mark of excellence, which assesses the effectiveness and deployment of flexible and remote working practices within the UK workforce.


Specifically, organisations will be asked to provide evidence of working practices which will be subject to evaluation by a Work Wise Assessor.

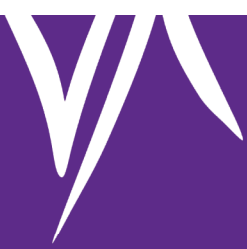
Assessment is on a three year rolling programme and will guide the organisation to plan further improvements. This will be supported by feedback from staff on the degrees of flexibility that exist within their workplace.

Specifically, organisations will have to demonstrate how smarter working practices impact on:

- ◆ Operational benefits
- ◆ Client benefits
- ◆ Employee benefits
- ◆ Change management
- ◆ Legal aspects
- ◆ Transport and environment
- ◆ Healthy Workplace

This is a non-exhaustive list of HR quality standards. If you would like to find out more about other standards which could benefit your organisation, or would like to discuss your needs further, please contact Lorna Lewis, Quality Development Worker on 01226 785564 or e-mail: lorna.lewis@vabarnsley.org.uk





Advice Team



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Please note that although our building has disability access, the advice office is based on the first floor which is accessed by stairs only. We do however have use of a ground floor room as and when required.

Should you have a meeting with any of our staff and require a ground floor room please call our office and let us know so that we may make arrangements with the room provider. The team also offers 'outreach' provision for many of its services should your organisation require this.

If you have any suggestions on how we might change or improve our update, or you would like to talk to someone about anything contained in this legal update please contact our office.

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