



COMMUNITY ADVICE TRAINING & SUPPORT

LEGAL UPDATE

June 2008: Issue 10



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:

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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 legal surgeries planned so far for 2008 are as follows:

Tue 15th July

Thu 4th Sep

Please contact our office if you wish to book an appointment.

Tel: 0845 231 1313

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.

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LEGAL UPDATE

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CASE LAW

Does annual leave accrue while someone is on sick?

In the case *Stringer and others v HM Revenue and Customs*, the Advocate General has expressed an opinion that annual leave does accrue while an employee is on sick leave. However the employee cannot opt to take an holiday while they are unfit for work, but can only take annual leave once they return to work. If their employment terminates, they would be entitled to pay in lieu of holiday.

The case is awaiting a decision by the ECJ, but the Advocate General's opinion is often followed.

For further guidance on annual leave entitlement, please contact Jane Jefferson on 01226 286841 or 0845 231 1313

FLEXIBLE WORKING TO BE EXTENDED

The government has announced plans to extend flexible working rights to parents of children under the age of 16.

The changes are likely to take effect from April 2009 and will give an extra 4.5 million parents the right to request flexible working hours.

Currently only parents of children under the age of six or parents of children who are disabled are entitled to make this request.

For further details about flexible working, please contact Jane Jefferson on 01226 286841 or 0845 231 1313

LEGAL UPDATE

Fair Procedure for Redundancy

VAB is grateful to Alan Robinson of Cross Keys Law for providing the following information...

Where an employer makes redundancies, it is necessary to follow fair procedures. In particular, it is necessary to use fair and objective selection criteria to decide who should be made redundant. In a recent case, a company decided to remove one level of management. There was a single post created and two of the potentially redundant managers were invited to apply for it. The position was awarded to one of the potentially redundant managers on the basis that he had a 'less insular management style'.

The other manager brought a successful claim in the employment tribunal for unfair dismissal. The tribunal held that the selection criteria had been purely subjective as they relied almost entirely on the view of one director to judge the abilities of the candidates. The tribunal also held that it had not been appropriate to throw the application process open to internal candidates when there was potential redundancy. The Employment Appeal Tribunal upheld the ruling of the Tribunal and said that objective selection criteria are required when making staff redundant.

Employers contemplating redundancies should ensure that their selection criteria are objective and fair. They should ideally decide on their list of objective criteria prior to the selection process and apportion an appropriate scoring system for each of the criteria. The employer should score the potentially redundant employees, and then discuss with them how they compare to other employees and why they were the ones selected for redundancy.

For further advice on the redundancy process, please contact Jane Jefferson on 01226 286841 or 0845 231 1313

LEGAL UPDATE

Top 10 Tips for Redundancy

CIPD (2008) have released their top 10 tips for redundancy:

- 1) Make sure there is a 'fair' reason for dismissal and that you can objectively evidence this, and ensure that the employee in question's job really has disappeared as a result.
- 2) Ensure your redundancy selection criteria are capable of being objectively justified. Being "a good team player" or "popular with clients" are not objective.
- 3) Ensure that the redundancy selection criteria are non-discriminatory eg. if considering absence, do not count maternity absence.
- 4) Consult employees, covering the reasons for their selection, and possibilities for avoiding dismissal.
- 5) Build in a flexible timetable. Failure to provide enough time could lead to allegations that the decisions had been made in advance.
- 6) Gather ideas—discuss selection with both the redundant employees and those who have not been selected for redundancy. Both may provide ideas to prevent the redundancy.
- 7) Adhere to procedures (*Statutory Dismissal Procedures*)—a fundamental part of any dismissal is to invite employees to a meeting (with accompaniment from a Trade Union rep or colleague) to listen to the employees' concerns, tell them the outcome of the meeting in writing and allow the right to appeal. If they do appeal, a manager not involved in the initial meeting should hear the appeal. Again, employees have the right to accompaniment, and to be notified of the outcome in writing. **FAILURE TO FOLLOW THIS PROCEDURE MAY RESULT IN A CLAIM FOR UNFAIR DISMISSAL.**
- 8) Employers are obliged to consider the availability of suitable alternative work. Employers should provide full details of any vacancies so that employees can evaluate the opportunity properly.
- 9) Ensure employees have a chance to air any grievances before being selected for redundancy. If a grievance is raised, ensure it is investigated fully before making the dismissal.
- 10) Check contracts of employment to ensure additional benefits eg bonuses, are not triggered before the dismissal end date.

For further information on redundancy, please contact Jane Jefferson on 01226 286841 or 0845 231 1313

LEGAL UPDATE

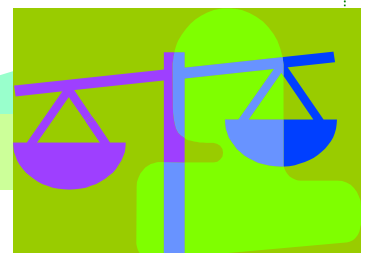
Merger of the Health & Safety Commission and the Health & Safety Executive

From 1 April 2008 the Health and Safety Commission and Health and Safety Executive merged to form a single regulatory body.

The merger will mean:

- There will be a single national regulatory body responsible for promoting the cause of better health and safety at work
- The current Chair of the Commission becomes Chair of the Board of the new Executive
- Existing Commissioners are appointed as non-executive directors of the new Executive for the remainder of their term of office with the relevant responsibilities of the new roles
- The potential size of the Board of the new Executive will be no more than eleven members plus the Chair and members will continue to be appointed by the Secretary of State
- All the fundamental contents of the Health & Safety at Work Act remain
- None of the statutory functions of the previous Commission and Executive will be removed
- There is no change in health and safety requirements, how they are enforced or how stakeholders relate to the health and safety regulator – no health and safety protections will be removed.

For further information or advice on health and safety requirements please contact Jane Jefferson or Ann Moffatt on 01226 286841 or 0845 231 1313



LEGAL UPDATE

Illegal Working

Groups are reminded that from 29th February 2008, tougher penalties came into force for employers caught employing illegal migrants.

It is in your interest to make sure that migrant workers you employ are eligible to work in the UK. Checking the documents of prospective employees before you hire them provides you with a 'statutory excuse', which may prevent you having to pay a civil penalty. For workers with a time limit on how long they can stay in the UK, you must repeat the document checks at least once a year to retain the excuse.

Ensure you don't discriminate

Ensure you carry out document checks on ALL prospective employees, otherwise you risk a claim of discrimination. Do not make presumptions about a person's right to work in the UK based on their background, appearance or accent.

If you would like a copy of the Border & Immigration Agency's leaflet 'New Measures for preventing Illegal Migrant Working in the UK', **please contact Jane Jefferson on 01226 286841 or 0845 231 1313**

Payroll & NIC

From 6th April 2008, a new form P46(Pen) should be used instead of form P160.

For payroll advice, please contact our office on 01226 286841 or 0845 231 1313

Statutory Dispute Procedure

Following the Employment Act 2002 (Dispute Resolution Regulations) 2004, employers are reminded once more of the statutory 3 step procedure which *legally* must be followed in the case of any formal disciplinary, grievance or dismissal:

- Letter
- Meeting
- Appeal

This procedure must also be detailed in ALL contracts of employment, and/or reference to an appendix document which should be issued with the contract.

For comprehensive advice on the procedure, please contact Jane Jefferson on 01226 286841 or 0845 231 1313

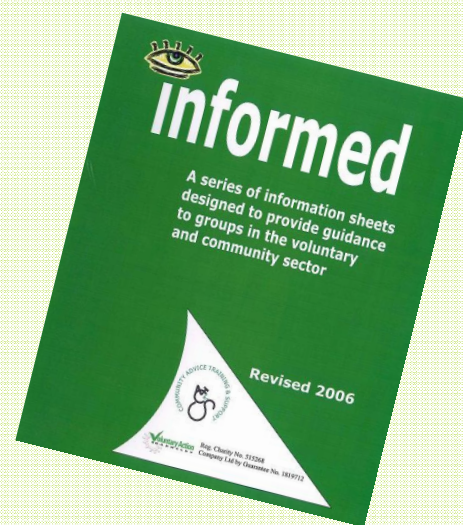


LEGAL UPDATE

The VAB Community Advice Training and Support team are updating and re-branding their folders 'Informed' and 'Informed 2 –Planning'. The team are always interested in finding out the advice needs of local organisations and what information they would like to see featured in the folders.

Informed

Setting Up
Constitutions
Running the Organisation
Employing a Worker
 1) Recruiting Staff
 2) The Contract of Employment
 3) Termination & Dismissal
Charities and Contracting for Services
Fundraising and Trading
In the Pipeline
Useful Contacts



Informed 2 – Planning

Explaining about your Organisation
The Future – creating a vision and strategy
Marketing
Funding and Income Generation
Risk Analysis
Useful contact details



If there are other key areas you would like to see in the folders, or you would like to provide feedback regarding the current folders, please contact Jane Jefferson or Ann Moffatt on 01226 286841

LEGAL UPDATE

State Aid Rules

State Aid, being part of European Union competition law, should not be a concern for most charities and social enterprises. It is a current issue, though, if you are involved in public/third sector social enterprise projects (particularly in health, education or capacity building), supported public-sector outsourcing initiatives, or community asset transfers...

(Bates, Wells & Braithwaite, 2008)

For a copy of the complete Bates, Wells & Braithwaite article on State Aid, please contact Jane Jefferson or Ann Moffatt on 01226 286841 or 0845 231 1313

Alternatives to the Cheque Book

Back in 2007 Community Matters had an enquiry from a member regarding a secure alternative to cheque books for small charities. They had noticed that several local retail outlets were now refusing to accept cheques or had signs up saying that this facility would be stopping soon. Their group was advised to get a card but as an unincorporated association there are a number of barriers. There are also challenges with regard to financial controls—basically it's hard to replace the simplicity and security of 2 signatures on a cheque.

Lloyds TSB and RBS/Natwest provided the following suggestions: -

Debit Cards This would give any and all individual card holders more or less unlimited access to the funds on the account in the form of cash through the Service Tills (with a daily limit) or through purchases of goods and services, which in theory they could spend up to available funds on the account. This option may not have sufficient financial controls.

Business Charge Cards The cards would also be issued to named individual trustees/staff in the name of the organisation. The cards would have a preset limit (which can be small and could vary from card to card). The organisation would have an overall limit for the total number of cards issued. At the end of the month, the total amount outstanding on all of the cards is debited to the organisations account (as with a credit card, you are debited some weeks after the expenditure has taken place, thus adding cash flow). A record can be produced to track each individual's expenditure. Both Lloyds and Natwest currently charge between £25 and £30 a year per card and neither seemed willing to waive this fee, although you might have more luck locally.

Internet Banking There are various options, but the most viable options seems to be the free 'On-Line Banking'. Whoever has the password can make payments of up to £10k/day. However, Unity Bank does have a dual authorisation system that requires a separate trustee or staff member to authorise payments set up by the first. As far as we know they are the only bank to have this facility. There is also nothing to stop organisations banking with more than one company, for example having both a Unity account for on-line banking and a charge card on a different account.

Telephone Banking This is also free to use and has similar issues to internet banking but is available to those without access to the internet.

(Community Matters, 2007)

For a copy of the complete Bates, Wells & Braithwaite article on State Aid, please contact Jane Jefferson or Ann Moffatt on 01226 286841 or 0845 231 1313

DEVELOPMENT

Developing a Flexible Working Policy

The law on flexible working...

In April 2003 the 'parents right to request' was introduced, which gave parents of children up to the age of 6, and parents of a disabled child up to the age of 18, the right to request flexible working.

In April 2007 this was extended to parents of adults with disabilities, and the government has now accepted review proposals to increase this right to parents of children up to the age of 16. It is predicted that this change is likely to come in to force in April 2009. Watch this space for further information on the changes...

The types of flexible working...

- Part-time work
- Term-time work
- Job Share
- Flexi-time or Time off in Lieu (TOIL)
- Compressed hours eg. blocks of work such as fortnight
- Annualised hours
- Tele-working or working from home
- Career breaks

What are the benefits of offering flexible working?

Offering flexible working is attractive to potential new employees when recruiting. For existing employees, CIPD research carried out by Kingston University/Ipsos MORI has found that individuals are more emotionally engaged, more satisfied with their work, speak more positively about their organisation and are less likely to leave. It can provide better work-life balance and helps organisations retain skilled employees.

What does a Flexible Working Policy need to include?

- Details of the legislation
- Aims of the Policy
- Qualifying criteria
- The application procedure
- The grounds on which the request will be approved or refused
- The appeal procedure and how to appeal
- Agreed and review dates for the policy, and signature of the Chair

Organisations will also need to consider a system of on-going monitoring and quality improvement of the policy.

For further support in developing a Flexible Working Policy, please contact Jane Jefferson or 01226 286841 or 0845 231 1313

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Please note that although our building has disability access, the CATS 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' facilities 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 newsletter please contact our office.

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