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Is your business ready for the Bribery Act?

The Bribery Act 2010 comes into force on July 1, 2011, and, in modernising the law on bribery, puts an onus on all businesses to prevent it.

Bribery is to "offer, promise or give a financial or other advantage" to someone else either as an inducement or reward for behaving improperly – whether or not the person being given the advantage is the person behaving improperly.

Alternatively, people can be guilty of bribery if they promise or give financial or other advantages to someone who would be acting improperly simply by accepting them.

In either case, it does not matter whether the advantage is offered directly or through a third party and the list of activities which a bribe may relate to includes any activity connected with a business, or performed in the course of employment, among others.

A business may be liable for failing to prevent an employee or agent from bribing on its behalf, or if it pays a bribe in order to obtain or retain business, or to gain some other advantage for it.

In tendering for business, offering any advantage over and above what could normally be offered as part of a tender

process could constitute a crime if, in so doing, the business was trying to influence a decision maker.

Does this mean that a business cannot provide hospitality, promotion or other business expenditure?

No. The Government has stated it does not intend that bribery includes genuine hospitality or similar business expenditure - providing that it is reasonable expenditure and proportionate to the business.

Can a business defend itself against allegations of bribery?

Yes. A business is not guilty of failing to prevent bribery if it can show that there were adequate procedures in place in relation to the size, nature and complexity of the business.

The Ministry of Justice has also published a guide to the Act, setting out six principles to help businesses. In brief these are:

(1) **Proportionality:** The action a business takes should be proportionate to the risks faced and also to the size of the business. The larger the organisation, or the greater the risk of bribery in the

market or territory in which it operates, the more it needs to do to prevent bribery.

- (2) **Top level commitment:** Those at the top of a business are in the best position to ensure it conducts itself without bribery, and so must be active in ensuring that all staff understand it does not tolerate bribery.
- (3) **Risk Assessment:** This entails researching the markets in which the business operates and the people with whom it deals. Many organisations operating primarily in the UK will not face the risk of bribery so this is not an arduous task.
- (4) **Due diligence:** Businesses should take steps to assure themselves that the people it takes on are trustworthy.
- (5) **Communication:** Communicating policies and procedures to staff and others will help deter bribery, and may involve extra training.
- (6) **Monitoring and Review:** Any business faces risks so they should monitor and review any procedures in place, as these may change over a period of time.

This is a complex area which needs to be considered and we advise that you consider in some detail the guidance issued by the Government on the procedures which businesses can put in place to combat this crime.

Employee Benefits

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ELAS Rewards Package that will **STRETCH** your employees' income

ELAS understands that as the economic climate shows little sign of heating up, rewarding staff can be financially difficult for Employers. To combat this, ELAS have introduced a service that makes your employees pay go that little bit further.

The launch of ELAS Rewards will give your employees access to a multitude of discounts and a saving of up to £1,000 each year.

The new service allows our clients to reward their staff without breaking the bank!

Alongside this, your employees can also access a helpline which can offer counselling and practical assistance for stress, debt management and other personal problems.

As with all of our services, the Employee Benefits Scheme is intended to integrate seamlessly into your current

package, and in most cases for little or no additional cost.

To find out more, call the ELAS team on 08450 50 40 60



Health & Safety

Bosses are worst for health and safety blunders

British bosses set a bad example when it comes to health and safety gaffes in the workplace, according to our latest research.

Nearly nine out of 10 (88%) admitted to breaking at least one basic health and safety regulation in the past week, with three quarters of those (76%) knowing they were flouting the rules at the time.

We surveyed 1,000 businesses, and also found:

- More than half (51%) admitted heavy lifting without following the correct procedures
- 44% had left a slip, trip or fall obstacle on the workplace floor
- 49% had used electrical equipment that hadn't been safety tested
- 26% risked falling from height by balancing on the edge of a table or chair to change a lightbulb or reach a high shelf.

Yet 56% were happy to ignore their own misdemeanours and pull up at least one member of staff for breaking a basic health and safety rule within the previous week.

Wayne Dunning, our health and safety manager, said: *"It really seems to be a case of do as I say, not do as I do."*

"Bosses often try to make out that health and safety is confusing, but this shows they are clearly clued up about what constitutes a hazard and are quick to police them – they just do as they like when it suits them."

"If they genuinely want to ensure their workplace is a safe and legal place to be, then bosses and managers need to take the matter seriously and lead from the front."

For more information about ELAS's health and safety business support services visit www.employment-law.uk.com or 08450 50 40 60.



Bank Holiday madness set to strike again in 2012

It may seem a long way off, but next year's Diamond Jubilee is likely to mean fewer days annual leave for most workers, according to our latest research.

Following on from this year's experience with the Royal Wedding, more and more businesses are determined to take additional bank holidays out of staff's annual leave entitlement – rather than face another month like this April.

This year's spring holiday madness was made worse by the fact that the additional holiday fell within a period of 10 days which already had three public holidays due to Easter falling so close to May Day.

Although there will be no such bottleneck of holidays next year, businesses have learned their lesson the hard way.

Peter Mooney said: *"From the moment the Royal Wedding was announced, we had no end of companies calling us asking how to deal with it.*

"As well as the contractual issue as to whether or not they had to give staff an extra day off, there was the added complication of so many staff seeking to take holidays during the three-day week.

"Some businesses even decided to shut up shop altogether such were the difficulties of keeping factories running with only three working days in 11.

"The additional bank holiday for the Queen's Diamond Jubilee will fall on June 5, but with the late May bank holiday also being moved to June 4, employers once again face a three day week.

"From the businesses we've spoken to, even those firms which didn't set a precedent by forcing staff to take the day out of annual leave this year seem determined to do so in 2012."



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ELAS launches new service to reduce your absence costs

Two thirds (66%) of small businesses are failing to tackle poor sickness absence rates, our latest research found.

One in three (30%) leave absence management to untrained line managers, which in many cases allows staff to 'pull sickies' as and when they want.

Following a successful pilot where responsibility of reporting sickness was transferred from staff line managers to a trained third party, ELAS has developed Absence Assist, which aims to reduce absenteeism in SMEs by between 10% and 30%.

Head of marketing, Annabel Dawkins, said: *"Most SMEs simply don't have the resources to manage sickness absence*

properly so they rely on untrained line managers who are already busy with their own jobs.

"But if you give staff an inch, some will take a mile and many workers now take advantage, texting their boss rather than calling in sick, safe in the knowledge that their managers are too busy to ask them awkward questions."

Absence Assist is a combined 24-hour absence report line and management service. Instead of reporting to their line manager, staff must call and speak to one of a team of trained absence managers, staffed by registered nurses.

The absence manager takes them through a thorough absence procedure, making follow

up calls to agree a back to work date and providing detailed feedback for the employee's managers to refer to in future.

All information is entered direct into Employersafe to create absence records which are updated automatically, ensuring personnel and payroll files are kept up to date.

Annabel added: *"Just having to speak to an independent person rather than a line manager can drastically reduce absenteeism.*

"In the past, only big businesses have been able to afford this kind of service but by coupling it with Employersafe, it is now a simple and affordable option for all SMEs."

Haulage company prosecuted for using dangerous haulage equipment.

A timber haulage and wood recycling specialist was prosecuted after HSE inspectors found the trailer used to move waste chipboard around the site was in such a poor condition it was putting its operators at great risk.

The trailer had no proper floor, no brakes and no lights. The HSE found that where the floor should have been, there was a series of metal struts laid across the trailer's skeleton, with pieces of wet and broken chipboard placed on top.

Though the trailer was only used on internal site roads, these were busy with site staff and varying vehicle traffic and therefore the faulty trailer could have proved hazardous during its daily use.

Inspectors also found the loading process at the plant was not in any way organised.

Workers were placing packs of chipboard onto bearers on top of the trailer using a JCB Telehandler; but without set regulations for operator use. Loads were unbalanced and used only one strap instead of the two recommended by the British Standard Load Restraints.

Overall, the inspection proved that there was no safe system of working and workers were inadequately trained and supervised.

Prohibition Notices were served on the trailer and the telehandler; which was also found to have defects. Neither pieces of equipment had the legal certificates required under the Lifting Operations and Lifting Equipment Regulations.

The Haulage company appeared in court and pleaded guilty to failing to ensure its employees' safety, in breach of Section 2 (1) of the Health and Safety at Work Act.

Plant hire firm fined £50k for faulty equipment

A Plant Hire operator has been fined more than £50,000, plus costs, after an accident which killed a forklift truck driver at the firm's site in Buckinghamshire.

Investigations proved that a mechanic at the site had wrongly modified the braking system on a forklift truck, which led to it overturning and killing its driver.

Construction company ignores HSE prohibition notice

A Coventry-based construction company has been fined £6,000, plus £8,000 costs, for using unguarded drills, guillotines and hazardous paint spraying kits.

HSE inspectors had previously visited the site and issued prohibition notices against unguarded machinery, which upon re-inspection had been ignored.

Budget retailer fined £33k for blocked aisles

A major budget retail store has been ordered to pay £33,000 after admitting six charges of failing to ensure staff and public safety was implemented at its South Wales warehouse.

The overstocked warehouse was found to have blocked aisles and fire exits.

The retailer, which operates around 300 national stores, failed to protect staff from risks by overstocking goods, not training staff and blocking fire exits and aisles.

It also pleaded guilty to putting the public at risk by blocking fire exits and escape routes.

Engineers fined £14k for causing hotel death

Two engineers have been found guilty of causing the death of a visitor at a hotel in Cornwall.

The contractors had installed and commissioned a boiler into one of the guest rooms which was later found to be pumping out fatal levels of poisonous gas.

It was also revealed that the engineers had also fitted the end of a flue under a hotel room window which was found to be nailed shut.

The contractors were found guilty of being in breach of gas regulations and the Judge at Truro Crown Court stated that their work had been responsible for the death of a hotel guest.

Agency workers laws set for overhaul

As of October 1, 2011, temporary agency workers who have spent 12 weeks working on the same assignment will be entitled to the same pay and working conditions as their permanent colleagues.

Under the Agency Workers Directive (AWD), once an agency worker has spent 12 weeks with the same business doing broadly similar duties, they will be entitled to the same basic hourly rate as if they had been recruited directly.

They could also be entitled to overtime, shift allowances, unsocial hours premiums / bonuses, payments for difficult or dangerous duties and commission payments. They will be entitled to the same rest breaks and annual leave as the client's employees.

Moreover, the AWD also gives agency workers some additional rights from day one of their assignment – although benefits such as occupational pensions, occupational sick pay and company car allowances or health insurance will be exempt.

Obviously, these rules will have huge knock-on effects for businesses. The AWD will impact on recruitment strategy, workforce planning, payroll management and agency relationships.

If agency workers form part of your business, call the ELAS team on 08450 50 40 60 for advice on what the changes will mean for you.

Most businesses unprepared for ageing workforce

More than half of small businesses are unprepared for having employees working beyond the traditional retirement age of 65, our survey found.

The default retirement age (DRA) will be abolished this autumn, with businesses no longer able to force staff to retire on their 65th birthday due to age alone.

But just months before the new law comes into force, our research found that most SMEs were unaware of the practical impact the new law will have on many of their working practices.

Of those businesses which currently offer death in service benefits or private health cover, more than half (57%) did not realise that the cost of providing these would probably soar for those employees aged over 65.

And almost as many (54%) said they would no longer honour those staff benefits if costs did rise, leaving staff reaching 65 having to accept potentially worse pay and conditions in order to stay in work.

Peter Mooney said: "Most businesses are now aware that they cannot force staff to retire due to age alone, but it seems many

haven't actually thought through how the new law will affect them in more practical terms.

"Expensive death in service and healthcare benefits are just two examples of how employing older workers will affect businesses - risk assessments, access requirements and adjustments for disability may also need revision as workforces grow older."

For more information about ELAS's employment law services call 08450 50 40 60.

ELAS Sponsorship



ELAS rider, Guy Martin, was celebrating after taking four podium finishes in the Isle of Man TT motorbike races.

Martin took second place in the blue riband Senior TT, third place in the two Supersport races and another credible bronze in the Superstock.

While disappointed not to have a win to his name, Martin immediately said he could sleep content having led for the first few laps of a Senior TT race.

Having sponsored Martin for several years, ELAS stepped up this year to also become partner for his team, Relentless Suzuki TAS



Racing, while also supporting up-and-coming rider, Dan Kneen.

After the week-long festival, team manager, Philip Neill, paid tribute to all the team's sponsors, adding: "Without their support, we just would not be here."

Meanwhile, ELAS has also announced its sponsorship of Caterham Motorsport's Driver of the Year trophies which honour the safest and most competitive drivers.

ELAS has provided health and safety advice to Caterham Motorsport on a range of issues for a number of years.

And to demonstrate that driving safely doesn't have to mean taking all the fun out of motorsports, it has now sponsored its R300 and R400 Series trophies.

Marketing manager, Annabel Dawkins, said: "First of all, we want to congratulate Guy and the rest of the TAS Racing team.

"Like them, and like all the Caterham drivers, we aim to be the best at what we do not by being reckless with our business but by taking care to do things correctly and well.

"That's why we're so proud to have our name associated with some of the best loved names in British motorsport in this way."

Blunders



WIN £25
M&S vouchers

It may not be as blatant as our last, but we think that this blunder is probably repeated in offices around the country – which is why we made it this quarter's winner. If you think you have seen better recently, send us a picture and you could win £25 in M&S vouchers. We'll even keep your secrets safe!

Send your photos to
blunders@employment-law.uk.com

Questions & Answers

Most of my staff are men and I have noticed that there seem to be a lot of people calling in sick when our local football team plays away from home. I have no proof they are going to matches, so what can I do?

Answer:

Around 15% of sick leave is taken under bogus circumstances, and this percentage obviously grows the easier you make it for staff to 'pull a sickie'.

Line managers who accept a text message instead of a phone call, for example, are asking for trouble.

Ideally, you should have a member of staff who is absence management-trained and can take staff through an agreed and robust reporting process.

Just having such a daunting process can deter those looking for a free duvet day, but is still fair on those staff who are genuinely ill.

Alternatively, it is now possible - and probably more cost effective - to outsource this to specially trained and independent experts who will provide detailed feedback to their employer.

With ELAS's absence management service, this feedback can be fed into Employersafe, further enabling you to evidence patterns such as the one you describe, then give you all the support you need to deal with it accordingly.

For more information on ELAS's absence management services call the team on 0161 785 2000.

One of my staff has recently been signed off work with stress? We're all under pressure, so how do I deal with one worker differently to everybody else?

Answer:

Work-related stress is a very serious problem for any employer, and employee. We all suffer a certain amount of stress from time to time, but when it starts to affect someone's work or health, employers need to react. When it affects health, stress can lead to headaches, stomach upsets, high blood pressure and even stroke and heart disease.

For too long, many employers have tended to confuse stress with pressure – and ignored it. Quite rightly, the courts have responded and, in recent years, compensation payouts have increased.

All employers have a duty to undertake risk assessments and manage activities to reduce the incidence of stress at work, and failure to do so can lead to claims of negligence. In the case of chronic stress, stress may be included as a mental condition covered by the Disability Discrimination Act – meaning employers have a duty to make reasonable adjustments to accommodate the needs of that employee.

As well as helping rehabilitate the employee who has been signed off, it would be prudent to conduct an audit of your workplace policies and practices to prevent future failure also.

ELAS

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