

MARCH 2010

# The **ELAS** Navigator

Totally Integrated Business Support

## All quiet on the Employment Law front?



**You would be forgiven for thinking that in a General Election year, there is little or nothing in the way of new legislation being introduced this April. But you would be wrong.**

There is a considerable amount of new legislation being introduced this year, not only in April but also in October.

### Fit Note

One change that has received considerable publicity is the introduction of the so-called "fit note" designed to replace the existing medical certificate. This is introduced with effect from 6th April 2010.

It is no secret that absenteeism in the UK is a huge problem for businesses large and small and there is no doubt that there have been abuses in the use of medical certificates, which seem to be issued for every

ailment no matter how trivial. This feeds the system to create a climate where it is all too easy to take a day off just because the person feels like it.

Now from April, the emphasis will be on not that someone should refrain from work but what work a person is capable of, albeit suffering from a medical condition.

It appears that many people with health conditions can, with some support from their employer, work as they recover from their condition. This will help an individual because, according to studies, work is good for health, which can therefore help recovery and also assist the employer by reducing sickness absence. The new fit note system will mean that doctors can advise that an employee is either:

- Unfit for work, or
- Maybe fit for work

There will also be a new option "maybe fit for work taking account of the following advice". Consequently a doctor may be able to suggest ways of helping an employee get back to work which might mean discussing with that employee either a phased return to work or altered hours, or amended duties or workplace adaptations depending on the extent of the employee's medical condition.

The new system should work wonders for addressing absenteeism, coupled with a more proactive approach from the employer in dealing with and managing an absence policy which should discourage the malingeringer from taking regular days off, but assist the genuinely medically unfit back to recovery and back to work.

### Training

Also new in April is the right

to request time off for training. This will initially only affect businesses with 250 or more employees, however, all business will be effected from April 2011, so now is the time to prepare for this.

An employee can request time off to undertake training, which can be accredited leading to a qualification or unaccredited training to help employees develop specific skills relevant to their job, workplace or business.

To make a request for time off to train, an individual must be an employee and have continually worked for his or her employer for at least 26 weeks on the date that the request is made.

The procedure is similar to that for requesting flexible working in that it must be in writing and contain certain information which includes the subject matter of the proposed training or study, where proposed training or study would take place and when, who would provide the training and/or supervise it, whether or not it would lead to a qualification, and if so what qualification and how the employee thinks the proposed training or study would improve his or her effectiveness in the business.

Upon receipt of the request the employer must hold a meeting to discuss the request. The meeting must

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be held within 28 days of receiving a valid request, after which the employer either accepts the request on the basis of the information set out in the written request or hold the meeting, and then within 14 days of that meeting inform the employee of the decision.

At a meeting the employee has a statutory right to be accompanied by a fellow work colleague. An employer may reject the request for one of a number of specific business reasons.

The employee also has the right to appeal against the employer's decision. An employee will only have the right to make one request for time off for training per year. Employees will not have the right to be paid during time off for training.

### **Paternity Leave and Pay**

Also being introduced this April is the right for fathers to be able to benefit from up to 26 weeks additional paternity leave during which fathers will receive paternity pay.

The mother must return to work so that it will not be possible for both parents to be off at the same time. This paternity leave will be available during the second 6 months of the child's life. This will come into effect for babies due on or after 3rd April 2011.

### **Equality Bill**

It is anticipated that this Bill will become law shortly, having passed its third reading in the House of Lords on the 23rd March 2010, but will not come into effect until October this year.

The Bill will harmonise and in some cases extend existing discrimination law covering the 'protected characteristics' of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. It will address the impact of recent case law and harmonise provisions defining indirect discrimination.



## **Fears over cost of 'National Sickness Day'**

**Phoning in sick could soon become a thing of the past as new research shows a quarter of bosses now accept text messages and emails from workers who 'throw a sickie'.**

The latest findings from ELAS were announced to coincide with the annual 'National Sickness Day', which falls on the first Monday in February.

That is the day of the year that has been identified as seeing a major spike in absenteeism, because staff are traditionally most likely to take an unofficial day off work.

Peter Mooney, Head of Consultancy at ELAS, said: "The traditional phone call was always a way for bosses to decipher whether staff members were bluffing or genuinely ill.

"But now, as our research shows, many employers are dispensing with it which leads me to think that the system will be open to more abuse than ever.

"The cost to the economy could soar and that is the last thing we need as we are slowly crawling out of the deepest recession for generations.

*"We need staff fit and healthy and willing to work hard to get business booming again. I do wonder if allowing them to text or email in sick is the most affective way of doing that.*

*"However our research also concluded that employers who accepted electronic forms of communication for sickness were also the ones who trusted their staff the most."*

Research suggests that around 350,000 workers simply do not bother turning up for work on the first Monday in February.

It is estimated that will cost industry over £30 million, taking into account factors such as lost business opportunities, reduced levels of service and output, and salary and overtime payments incurred.

Half of the 1,500 company bosses interviewed for the nationwide survey said they did not believe staff who

complained of being ill.

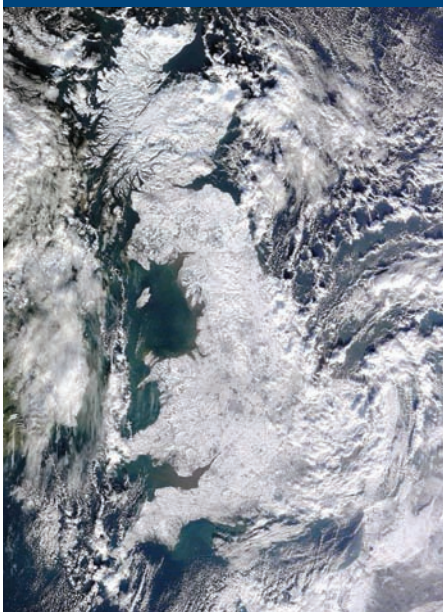
And the excuses get lamer every year, including one worker who insisted he couldn't get into work because the road outside his house was too busy to cross.

And the employee who said his mother-in-law was supposed to die at the weekend but didn't. Another told bosses he had a cold and was sneezing so much it made his teeth hurt.

Mr. Mooney added: "At least the dodgy excuses can give bosses something to laugh at but the reality is that absenteeism is a serious concern for modern business.

"And our research also showed that employers do not believe their staff are more likely to come into work ill because of fears over job security. In fact many believe workers use the stress of the economic collapse as an excuse to take more time off ill."

# Counting the cost of the Big Freeze



**The snow and ice may have disappeared but the financial impact of the Big Freeze will be felt for much longer, with reports that the cost could end up running into many hundreds of millions of pounds.**

This includes the cost of everything from insurance and pothole claims to the loss to the economy, which was estimated to be upwards of £1m a day.

And as Britain froze, and many businesses ground to a halt ELAS raised concerns that employers could face a series of expensive legal challenges if they refused to pay staff that could not make it into work because of the weather.

ELAS's Peter Mooney insisted that many company chiefs would be forced to pay hundreds of thousands of pounds through the courts for unlawful deduction of wages if they stopped paying staff that stayed at home as Britain froze.

Although employees have no general legal right to be paid if they do not come in to work, many companies have 'bad weather policies' to ensure wages continue to be paid.

Peter Mooney, Head of Consultancy at ELAS, said: *"The cold snap at the beginning of the year has cost the economy many millions, money companies can ill afford in the current climate. This is especially the case for smaller businesses where the loss of every member of staff really affects overall productivity."*

*"However I stressed at the time that stopping wages was not the way forward because bosses must be aware that they could end up paying ten times more in the long-term."*

*"Employees who can prove they could not attend work through no fault of their own will have a serious case for unlawful deduction of wages."*

And there are real concerns that such legal challenges combined with the loss of business because of the wintry conditions could force some businesses to close.

# Unseen face of the High Street



Andy Simpson Sales Director (left) and Rob Nicholls Managing Director (right).

**Plastic Card Services Limited, based in Macclesfield is nearing completion of a strategic investment programme. £2.5 million has been spent in new technologies, processes and people to ensure it remains the UK's No. 1 choice for the majority of high street names.**

The 20,000sq ft high tech manufacturing plant now houses 70 employees, 30 of which have been recruited in the past 12 months.

As the unseen face of many high street chains the company works behind the scenes as plastic card manufacturer, card personalisation centre, and distribution facility,

using their expertise and commitment to ensure the success of the many loyalty and gift card schemes which are familiar household names to us all.

Rob Nicholls, Managing Director, said: *"We are witnessing a complete change in the way stores and brands are engaging their customers. Well planned loyalty card schemes are used as part of an overall communication strategy. Customers and the buying power they bring can no longer be taken for granted in these trying times."*

*"We are building our infrastructure for the future as well as today and the way we manufacture plastic cards gives both our customers and ourselves a contribution to a negative impact on our environment."*

This year sees Plastic Card Services responsible for the launch of one of Europe's premier plastic card schemes using completely biodegradable PVC.

The material which Plastic Card Services has developed for use with its manufacturing processes completely biodegrades within 3 years in a natural environment.

Rob Nicholls says: *"With 30 new employees having started in the past 12 months that alone brings its challenges. ELAS has been invaluable in their specialist knowledge of HR and are on the end of a telephone at any time with instant expert advice. It has helped us to focus on our core areas of expertise which in turn helps our customers"*.

# Health & Safety Round-Up



## Lorry fall fine

A Leighton Buzzard based courier firm has been fined £35,000 plus around £5,000 costs after one of their employees broke his leg falling from the back of a delivery lorry he was unloading, when it drove away unexpectedly from a bay at the firm's depot.

The lorry driver had not been issued with the risk assessment it had drawn up for unloading, despite a previous HSE warning to review its arrangements for safe vehicle movements following other incidents at the depot.

## £450,000 damages for lost leg

An electrical engineer has received compensation from his former employers following a four-metre fall, which caused him to lose a leg.

The employee who had been working for a home improvement company was up a ladder removing some cabling from the outside of a house when it came away and he lost his balance, falling four metres to the paved patio below.

## Spotlight on Safety

Legislation	Date Enforced	Applies in	Implications
Machinery Supply Regulations 2005	29 December 2009	Great Britain	Deadline for manufacturers to ensure machines comply with amended essential health and safety requirements.
Control of Artificial Optical Radiation at Work Regulations 2010.	6 April 2010	Great Britain	Enacts EU Directive on protection workers from risks from lasers and other artificial optical radiation sources.
Notification of Conventional Tower Cranes Regulations	6 April 2010	Great Britain	Requires information about tower cranes assembled on site to be notified to the HSE after installation.

He landed on his feet, but the force of impact left him with such serious fractures that he had to have his leg amputated below the knee.

The employee should have been given scaffolding or a harness to make sure he was safe and should not have been asked to carry out a dangerous task that he had not been given training for.

A claim for compensation was paid after the company admitted liability and the monies received would be used for his future care and rehabilitation.

## Road contractor fails traffic lessons

A construction firm has been ordered to pay £154,000 after being convicted for the second time in just two and a half years for a workplace transport fatality.

The latest case being a reversing Telehandler, killing a subcontracted employee on a housing estate in Aylesbury.

Construction sites have to provide a proper traffic management plan with suitable routes for vehicles and pedestrians, together with appropriate signage. In this case the pedestrian

route was obstructed by skips and other debris. Vehicles were also blocking the route.

The company was fined for failing to comply with Construction (Health, Safety and Welfare) 15 (2) Regulation, which says traffic routes must be suitable for the people or vehicles using them.

In June 2007 the same firm was fined £100,000, plus costs for failing to heed lessons from a previous incident where an unqualified driver struck and killed a worker when the brakes had failed on a dumper truck.

## Timber mill death

A Northern Irish timber producer has been fined £50,000 after an employee was crushed to death in a sawmill.

A maintenance fitter died from injuries sustained on 31st May 2006 when a conveyor he was repairing started up, crushing him inside the machine.

A supervisor who pressed the re-start button, admitted failing to take reasonable care and was bound over for a year.

## Curry maker feels the heat over lost fingertip

A ready meals manufacturer has been fined £20,000 after an employee cut off his fingertip in a dough-dividing machine at their factory in London.

The company, which produces chilled and frozen Indian ready meals, asked the worker to repair a dough divider. Having removed the guard, he part severed the tip of his right index finger in part of the un-isolated machine.

A display screen designed to provide safety information to the operator was illegible and critical safety switches were disconnected.

In fact the machine was in a poor overall state.

In a previous prosecution over a slip in a freezer room the HSE had served the company with an Improvement Notice, which referred generally to maintenance procedures and should have alerted the firm to their importance. The company had not gone far enough to implement a proper maintenance system.



## Ask the Experts...

### Question

**ELAS Health and Safety team are often asked about what period of time repeat or periodic electrical inspections are recommended within the workplace?**

**And if the Electricity at Work Regulations have been updated since 1989?**

### Answer

They have not and therefore we make the following suggestions to our clients.

There is no specified limit on when to check fixed equipment which is generally wired to the mains system. However, hard wiring kit should be checked every 5 years under NICEIC rules. Portable appliances i.e. those plugged into a wall should be generally tested each year as a "bench mark only" although if regularly or heavily used these tests need carrying out more often.

ELAS Consultants also recommend checks be carried out on a "risk level" basis. HSE guidelines are that electrical equipment should regularly be visually checked to detect early signs of damage or deterioration.

Electrical equipment should be thoroughly tested often enough by a competent

### Wayne Dunning

Health & Safety Consultant

person and documentation kept of the tests. Ideally, this would be conducted by the original manufacturer or the authorised service and repair provider.

More information is available on:-

**[www.hse.gov.uk/electricity/faq.htm#top](http://www.hse.gov.uk/electricity/faq.htm#top)**

Or refer to **UK BS 7671:2008**.

### EFFECTIVE HI-VIS CLOTHING

**ELAS Health and Safety Consultant Wayne Dunning states that to be totally effective, HI-VIS CLOTHING should be of a colour that allows the wearer to stand out in their varying working backgrounds.**

In most cases the best colour for high visibility clothing is likely to be fluorescent yellow and should include reflective strips to highlight personal presence.

Our Consultant also recommends wearing reflective strips on items of clothing below waist level e.g. long jackets, overalls or trousers.

For more information refer to:- **[www.hse.gov.uk/workplace-transport/factsheets/clothing.htm](http://www.hse.gov.uk/workplace-transport/factsheets/clothing.htm)**

### Peter Mooney

Head of Consultancy ELAS

### Question

**The Government has already announced that it will review the default retirement age during this year 2010, having brought forward the original review date from 2011.**

**Is there a case for retaining a default retirement age?**

### Answer

A number of employers will argue that having a default retirement age means that employees and employers alike know where they are, in that employees know that when they hit a default retirement age, currently 65, that the issue of continuing employment is up for review.

On the other hand, not having any fixed retirement age means that the workforce at whatever age, know that all things being equal, they can carry on working for as long as they desire.

The Employers Forum on Age, (EFA), cite a number of examples in their literature where large employers, among them B&Q and the Nationwide Building Society have reaped the benefits of removing any fixed retirement age. Both companies report that they have not experienced any difficulty in respect of terms and conditions or performance management and performance and



productivity is maintained, irrespective of age.

Discrimination of whatever kind undermines employer/employee relationships and is a pernicious disease, which blights working life.

So what's the view of the readers of this column?

Do employers wish to retain a default retirement age and if so, what age should that be? Or are employers in favour of abolishing any default retirement age at all and dealing with employees equally at whatever age? We would appreciate your view.

It is time to consider the matter generally in the light of the Government's review and take stock of current employees, consider the age profile, review policies and procedures, particularly in relation to training and benefits, and in particular pension schemes and rules so that if the law is to change all employers will be well placed to address the changes long before they are required.

This requires involvement at the highest level. Indeed, senior management should lead any review. The EFA recommend reviewing flexible working rules. Employees often would like to retire flexibly by, for example, drawing pension and working part time.

# ...in the News



**BBC**  
Breakfast

**BBC**  
NEWS

The Daily Telegraph

**DAILY**  
Mirror

**DAILY EXPRESS**

## National Sickness Day 2010

New research conducted by ELAS to mark National Sickness Day 2010 was snapped up by national, regional and trade media alike. Our exclusive survey revealed how phoning in sick could become a thing of the past, as a quarter of bosses said they now accept emails and text messages from workers who "throw a sickie". The story was picked up by **BBC Breakfast** and the **BBC News Channel**, and Peter Mooney, Head of Consultancy, was whisked off to London at a moments notice to appear on both **BBC One Breakfast Programme** and the **BBC News Channel**. Peter was interviewed by the Beeb's Charlie Stay and Susanna Reid. The story was then picked up by national titles **The Mirror, Times, Daily Mail** and **Daily Telegraph**, regionals including **Liverpool Daily Post** and trade press including, **Management Today, Real Business, Human Resources**. It was also picked up a number of publications in Canada, India and USA.

## The Big Freeze

He may have been stuck at home because of the wintry conditions but ELAS's Head of Consultancy, Peter Mooney, was still available to give a number of interviews for national BBC radio stations, who were keen to discuss the thorny issue of employers deducting wages for staff who couldn't make it into work because of the weather. From the comfort of his own home Peter was first interviewed by **Peter Allan and Anita Anand on BBC Five Live's Drivetime programme**. The next morning, with Peter still housebound, he was a live guest on the ever popular **Jeremy Vine Programme on BBC Radio 2**, again discussing employment issues as a result of the Big Freeze. We are pleased to report that Peter was able to make it into the office the next day!

## Harry Redknapp faces tax charges

When news broke late one afternoon that Spurs manager Harry Redknapp was charged with two counts of "cheating the public revenue" during his time as boss of Portsmouth FC, ELAS were the first to confirm that his current club could sack Harry if he was found guilty. Peter Mooney was quoted on the back page of the **Daily Express**, saying: *"Tottenham will be quite within their rights to sack him if he is found guilty. In fact, I would go so far as to say that they will have no choice but to sack him. And he will have no legal grounds for appeal."*

## Gordon Brown bullying claims

When the BBC wanted an expert to comment following claims that Gordon Brown was a workplace bully, they turned to ELAS and Peter Mooney. He was interviewed live on the **BBC News Channel** and **BBC Radio Five Live Drivetime programme** and discussed the issue of bullying employers and how serious a problem it is in the modern workplace.

**Daily Mail**

**BBC**  
RADIO

**2**

**THE TIMES**

**BBC**  
RADIO

**5 live**

**LIVERPOOL**  
**DAILY POST**

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