



Even more red tape for businesses

Businesses are being warned to make sure they adhere to a raft of new regulations introduced on October 1.

A multitude of new laws from the 2006 Companies Act all came into force on October 1, including the first stage of an increase in statutory holiday entitlement and a rise in the national minimum wage.

The key points of the legislation are:

- The four week paid statutory annual leave entitlement have been increased by 1.6 weeks by the Working Time (Amendment) Regulations 2007.
- The extension will be implemented in two stages, with the annual statutory entitlement increased to 4.8 weeks from 1st October 2007 and 5.6 weeks from 1st April 2009.
- From 1st April 2009, then, a five day a week worker will be entitled to 28 days statutory annual leave. Although this, in essence, equates to the current entitlement of 20 days plus the eight public bank holidays, there will be no new right to take time off on the public holidays themselves.
- Employers who, as at October 1 2007, contractually provide all their workers with 'statutory entitlement plus public holidays' need not provide the workers with additional leave under the new rules.
- Until April 2009, employers may make payments in lieu of the

additional 0.8 week entitlement introduced on 1st October 2007. Thereafter, as with the current four week statutory leave entitlement, the extended leave may not be replaced by a payment in lieu except where a worker's employment is terminated.

- As with the current four week entitlement, the additional entitlement of 1.6 weeks may be carried over into the following leave year.
- Employers whose employees' leave is increased owing to the new rules will be obliged by S.4 of the Employment Rights Act 1996 to provide those employees with a written statement containing details of this change to their employment particulars.

One of the other most important changes is the increase in the minimum wage which was also implemented on October 1.

The minimum wage for workers aged 22 and over has risen from £5.35 to £5.52.

For workers aged 18-21 and those aged 22 and over, who are taking part in accredited training in the first six months of employment, the wage has risen from £4.45 to £4.60.

Workers aged 16 and 17, saw their minimum wage entitlement rise from £3.30 to £3.40.

Make sure you take out references, experts warn

Taking on staff without getting a written reference could result in problems for employers, experts are warning.

ELAS consultants say many bosses currently fail to take out references for new employees.

This can result in problems, particularly when it comes to dealing with disciplinary proceedings.

The key points when it comes to taking on a new member of staff are:

- You should not employ anybody without a written reference. Do not accept any references over the phone; only confirm the offer when you have the written reference.
- Where you have asked the question 'would you employ this person again?' and the answer is no, then do not employ that person no matter how desperate you are, as quite clearly there is a history of issues in that previous persons employment.
- When providing references they need only be factual and if you have any concerns about your former employee then you are perfectly entitled to state their start and finish date and their job title only.
- Finally, if you are required to give a written reference please ensure that the facts that you state are factually correct e.g. absences should be dated and recorded and return to work interviews should reflect this, if not, you run the risk of being sued by your former employee in County Court for loss of earnings and/or misrepresentation.



Smoking ban proves a drag for businesses

More than two months after the smoking ban was introduced many businesses are still confused over how to implement the new law.

The ban in all enclosed spaces, including offices, pubs and restaurants, seems to have been generally well received and implemented.

However, it is the enforcement of the law which is proving a headache for many business owners.

In the first weeks of the ban legal experts at Employment Law Advisory Services were bombarded with calls from concerned businesses.

More than 40% of their total calls since July 1 related to the smoking ban.

The most common queries came from managers who were confused about what to do if they caught someone smoking or if workers refused to abide by the new rules.

Peter Mooney, head of consultancy at ELAS, said: *"The main problem among the business community seems to be confusion over how to enforce the rules or what to do if people break them. If they fail to enforce the ban then they could be prosecuted and fined up to £2,500.*

"It is essential that businesses make sure their workers, or residents, do not smoke where they shouldn't.

"Workers caught smoking where they shouldn't be should be given a final warning or in extreme cases dismissed."

Some of the reports were so bizarre that ELAS staff have compiled a Top 5 list of the strangest methods people used to take a fag break.

Peter Mooney, said: *"One of the queries came from a nursing home which had a resident who was kicking up a fuss because he was no longer allowed to smoke downstairs.*

"This seems to be the main problem among the business community. They have no idea how to enforce the rules or what to do if people break them. However, if they fail to enforce the ban then they could be prosecuted and fined up to £2,500.

"It is essential that businesses make sure their workers, or residents, do not smoke where they shouldn't."

One of the most bizarre calls received by ELAS came from a manager who had caught a member of staff holding a cigarette through a mesh fence.

Top five bizarre tactics used to flout the smoking ban:

1. Smoking a cigarette through a fence.
2. Hiding behind a pot plant.
3. Leaning out of a window on the tenth floor of a high-rise office block.
4. Hiding in an airing cupboard.
5. Smoking in the cellar.

Mr Mooney added: *"The worker claimed he wasn't smoking within the office site as he was holding the cigarette on the other side of the fence.*

"When he was challenged as to how he actually smoked the cigarette, he came unstuck as he couldn't get his mouth through the fence to take a puff. He was given a final warning but his boss would have been quite within his rights to sack him."

Smoking was banned in the workplace from July 1 this year with employers who breach the regulations facing large fines.

The first prosecution was brought against licensee Hamish Howitt, who runs The Happy Scot bar in Blackpool.

He has denied 12 counts of failing to stop people smoking in his pub.

Mr. Howitt faces a possible fine of £30,000 if found guilty. His case has been adjourned because the magistrates want a district judge to rule on the case instead, due to the number of charges Mr. Howitt is facing.

The case is now not expected back into court until November.

One of the most high profile breaches of the ban came when The Rolling Stones repeatedly lit up during a concert at the O2 Arena, in London, in August.

The band escaped prosecution as Greenwich Council said no-one at the venue had complained.



Employersafe experts made the news across the world in August after reporting that the “Friday Feeling” was costing the economy £50 million-a-year.

The research revealed how the phenomenon of workers leaving the office early on a Friday afternoon was affecting business.

It also identified the most popular excuses for leaving the office early werelong lunches, a meeting out of the office but near the employee’s home and a doctor’s appointment.

ELAS’s Peter Mooney and John Peel were interviewed by media outlets across the globe, including radio stations in Vancouver and newspapers in Australia, South Africa and Japan.

They also appeared on BBC News 24 and Five Live with further reports on Radio 4’s Today programme and CNN and radio stations across the UK.

Peter and John revealed how the Employersafe software could help bosses counteract the Friday Feeling as well as advising them on how to take disciplinary action against serial Friday afternoon offenders.

Peter said: *“The Friday Feeling seems to be a universal concept across the globe.*

“We were stunned with the response to our research but it seems that workers are leaving the office early on a Friday everywhere from Tokyo to Tunbridge Wells.

“Being interviewed on a Canadian radio talk show was certainly one of the more bizarre moments of my career.

“However, it proves that this is a very real issue which affects businesses all over the world and Employersafe can help bosses who want to crackdown on serial slackers.”

Hundreds of companies are now using Employersafe to help them run their businesses.

The software provides a unique personnel service, which helps manage attendance and absenteeism, gives a step-by-step guide to disciplinary and grievance procedures as well as using a traffic light system to alert HR bosses to potential problems.

A health and safety version of the software is also available which provides employers with an easy to follow guide to risk assessments, centralised paperwork and training management.

Case Study

Jay Earles, 27, from Cheshire, runs Lab 15 Distribution - which markets and distributes new snowboarding and freeskating brands in the UK.

He said: *“Sloping off early on a Friday is not a problem as far as I’m concerned.*

I think most people would be surprised to find me still in the office after 12 on a Friday.

“I work long hours all week so starting the weekend a bit early is not something I feel guilty about.

“It hasn’t done any harm to my business. In fact, I reckon giving myself a few hours off on a Friday makes me work harder in the week to make sure I’ve got everything done.

“Some people do nothing all week and then think they can leave early on Friday, which is not on. I think working from home or having an extra long lunch on a Friday should be a reward for putting in the hours during the rest of the week.”

The company, which is based in Macclesfield, was launched in 2006 by snow sports enthusiast Jay.

Lab 15 is the sole UK distributor for Amplid snowboards, Avalaan Clothing, Jee Vice Eyewear and Dr Zipe goggles.



Updates in Health & Safety law

The Health & Safety team at ELAS is constantly monitoring important court cases and other developments to ensure its clients have the latest information.

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

£400,000 in fines after fatal explosion at plastics factory

Two companies have been fined £200,000 each after an explosion at a plastics factory in Glasgow which killed nine people.

ICL Plastics Ltd and ICL Tech Ltd were fined at the High Court in Glasgow, after pleaded guilty to safety breaches in relation to a major explosion and building collapse at the Stockline Plastics factory on May 11 2004.

The accident, which killed nine people and injured more than 40, was caused by liquid petroleum gas (LPG) leaking from a corroded pipe and then igniting, leading to the collapse of a four-storey building.

ICL Plastics Ltd was charged under ss.2 and 4 of the Health and Safety at Work, etc Act 1974 (HSWA) and ICL Tech Ltd was charged under ss.2 and 3 of the same Act.

The HSE pointed out that the two companies had failed to ensure the safety of their employees and others by failing to carry out a suitable and sufficient risk assessment or have a proper system to inspect and maintain the LPG pipe.

Assets frozen in asbestos case

The Government's Assets Recovery Agency (ARA) has announced that it has successfully frozen assets belonging to a Bradford man who was recently jailed for illegally dumping asbestos and excavation waste.

William John Peter Reidy, 60, who ran a demolition business called Space Making Development, was paid to take building waste away from companies despite of not holding a waste management licence.

Mr Reidy was sentenced to 16 months' imprisonment for four charges relating to the keeping and depositing of waste, including asbestos.

The ARA is now seeking to recover any assets the defendant gained as a result of the illegal activity.

ARA Interim Director Alan McQuillan said: *"We are determined to recover the proceeds from all types of illegal activity, including illegal dumping and fly-tipping which, as well as damaging the environment, poses a risk to human health."*

Hotel fined £10,000 after guest breaks hip

A Surrey-based hotel has been prosecuted after an elderly guest slipped and fractured his hip.

The guest was on his way to a wedding when he slipped and fell on some outdoor steps at the Burford Bridge Hotel in Mickleham.

An investigation by the local council found that the hotel company had failed to adequately assess the risks presented by the steps, which had inadequate handrails and were partially obstructed by flowerpots.

MacDonald Hotels and Resorts Ltd pleaded guilty at Dorking Magistrates' Court to two safety offences.

The company was fined £10,000 for failing to protect the health and safety of the public at the hotel, and £2000 for failing to carry out an adequate risk assessment. The council was also awarded all its costs.

Warning after patient falls out of hospital window

The Health and Safety Executive (HSE) has reminded NHS Trust hospitals of their responsibility to ensure the health and safety of patients after a man was seriously injured falling out of a window.

A 30-year-old patient with mental health problems was injured after he managed to clamber out of a first floor window at Leighton Hospital, in Crewe.

Investigations revealed a restrictor on the window had been defeated and that there had been a widespread failure over a number of years by the Trust to manage the risk of falls from windows. A similar incident had happened on the same ward in December 2002.

Mid Cheshire Hospitals NHS Trust were fined a total of £14,000 and ordered to pay costs of £3,982 at South Cheshire Magistrates Court, following a HSE prosecution.

The Trust was fined for a breach of Regulation 3 of the Management of Health and Safety at Work Regulations.

Ask the Expert...

A member of staff repeatedly turns up for work wearing lots of jewellery. She deals with customers face-to-face and I feel her jewellery is inappropriate in the workplace. Can I ask her to remove it?

Firstly, you must check if your company has a clear dress code which is set out in the employee's contract.

This should detail what is and is not acceptable in the workplace. If the employee's jewellery clearly does not adhere to this code then you are perfectly entitled to ask her to remove the items during the working day.

However, you must check that the jewellery does not have any religious connotations as this may complicate the situation.

Legal cases involving religious dress and symbols are becoming increasingly common.

Earlier this year, schoolgirl Lydia Playfoot lost a legal challenge over a ban preventing her from wearing a Christian "purity ring" in school.

And in 2006, a row erupted when British Airways employee, Nadia Eweida, sought to wear a cross outside of her BA uniform.

New regulations were introduced in 2003 which protect people in the workplace from discrimination on the grounds of their religion or belief.

It is important to establish whether your employee's jewellery has any religious significance.

The legal test is whether the wearing of a symbol of a religion, a ring or a cross for example, is a manifestation of the religion itself.



Pam Rogerson is ELAS's Head of Personnel.

She has 14 years' experience in private sector personnel, and is a graduate of the Chartered Institute of Personnel and Development.

Pam specialises in personnel and human resources related operational issues, concentrating on recruitment, training, contract, discipline, problem resolution and best practice.

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

First National Minimum Wage criminal prosecution case

The owner of a children's nursery has been fined in the first national minimum wage criminal case. The Proprietor of the day nursery entered a guilty plea of obstruction, an offence under the National Minimum Wage Act.

The Proprietor had refused to let customer staff see their records to check that she was paying her staff the correct wage.

The case was prosecuted by the Revenue & Customs Prosecution Office (RCPO), who have decided to prosecute the Proprietor, because of what they called a wilful refusal to cooperate when they visited the Nursery to inspect her account. The owner was fined £2,500.00 plus £500.00 costs. The judge stated that she had demonstrated a clear and deliberate intent to obstruct officers and this was a scandalous breach of the national minimum wage legislation.

A member of the Criminal Investigation Team for HM Revenue & Customs said: "This is a clear message to employers that HMRC and RCPO will actively pursue those they suspect of breaching the minimum wage law, if employers obstruct us and refuse to comply with the law, they could end up with a criminal record."




ELAS's warning about workers with the "Friday Feeling" hit the headlines around the world, including a slot on BBC News 24.

John Peel was interviewed about research, conducted by Employersafe, which discovered staff leaving the office early on a Friday afternoon were costing the economy £50 million-a-year.

John also revealed that long lunches, a meeting out of the office but near the employee's home and a doctor's appointment were the top three excuses used by employees wanting to leave the office early on a Friday.

Daily Mail

ELAS warned employees could face the sack for using social networking sites such as Facebook and MySpace during office hours.

The comments came after a survey revealed more than two thirds of London companies had banned or restricted access over fears of time wasting.

ELAS's Peter Mooney said the social networking sites were expected to cause numerous problems for employers as they gained popularity.

Liverpool Echo

Liverpool's biggest-selling newspaper reported how crafty employees have been getting around the smoking ban by hiding in cupboards or behind pot plants to have a cigarette.

ELAS revealed how its switchboards had been inundated by bosses confused over how to deal with workers caught breaking the ban.

The Sun

Calls by the TUC to allow staff to log on to social network sites such as Facebook during office hours were branded "nonsense" by ELAS experts.

Peter Mooney told The Sun that staff should only use the internet for work-related business.

BBC Radio Merseyside

ELAS's Peter Mooney was interviewed on the popular breakfast show about the impact of the new smoking ban, ahead of its introduction on July 1.

He offered his advice on how businesses in the city should be preparing for the ban.

Manchester Evening News

News of the appointment of ELAS's new IT manager Adam Ellison featured in the Manchester Evening News.

The 25-year-old, from Rochdale, was promoted to the role only nine months after joining the employment law consultancy.

He joined ELAS as a junior IT support administrator after graduating from Manchester Metropolitan University with a degree in Computing.

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