

References - the do's and don'ts

It is prudent for employers to verify candidates' employment history, qualifications, experience and/or assess the candidate's suitability for the job. In addition to standard pre-employment checks, for a role in 'regulated activities' it may also be necessary to take up a Criminal Records Bureau check.

Generally, references are sought from current and former employers and sometimes personal referees. However, information from the latter is of little value as it is unlikely the applicant would choose somebody who would not be complimentary. If the applicant has not been employed before, personal referees may be the only ones available but also consider seeking a reference from a previous school or college or a holiday/Saturday job if possible.

References are most frequently sought after the applicant has been given a 'provisional offer'. The offer letter to a successful applicant should state that it is a 'provisional offer subject to references satisfactory to the organisation being received'. If an employee starts a job before the receipt of their references, the employee will have the same rights in relation to wrongful dismissal or discrimination as any other employee. Therefore an organisation should determine the procedure, in

particular the timings, for when references are taken up and whether an employee can commence prior to them being received.



Consideration also needs to be given to what information is required and who best to approach. Whether the reference is provided by someone in the HR function or a line manager may depend on the type/level of job and the skills/attributes required. References are normally obtained in writing or by telephone.

There is no detailed legislation specifically designed to deal with the provision of references. However, the following legislation is relevant:

- The Unfair Contract Terms Act 1977 may apply to attempts to disclaim liability for a reference.
- The Financial Services and Markets Act 2000 Act. Employers engaged in the provision of financial services governed by this Act are bound to



supply references.

- The Data Protection Act 1998 may also apply to the processing of information in a reference.
- Within the remit of discrimination legislation and the Employment Rights Act 1996 are discriminatory and certain detrimental acts committed by any employer after termination of an employee's contract.

An employer does not have a duty to provide references for a serving or past employee unless there is an express or implied contractual term in their employment contract. However, it is rare for an employer to refuse.

To avoid a potential tribunal claim, referees should avoid giving any subjective opinion about an individual's performance, conduct or suitability, unless it can be substantiated with factual evidence. As a guide, references should be fair, accurate, based on specific factual data like start date, job title, etc and not give a misleading overall impression of the employee. In order to establish controls regarding the provision and approval of references it is recommended that a central source responds to references and that all employees and managers are periodically reminded of this.

Handling the fallout of the Icelandic volcanic eruption

The airlines have certainly been in the headlines this year and as a result of a volcanic explosion in Iceland they find themselves in the news again.

It is estimated that 150,000 Brits were stranded overseas as a result of the recent flight restrictions and this has had huge implications for businesses across the UK.

So how should businesses deal with their employees who were stranded?

Whilst legally, employees are contractually obliged to attend work and therefore employers are within their rights *not* to pay employees, employers need to balance their legal obligations with encouraging goodwill, good working relationships and morale.

Being flexible and offering, where possible, for staff to make up some of their hours on their return or use holiday can alleviate some of the stress and financial burden that employees may be experiencing as a result of this recent crisis.

This may also help manage employees who have had to bear the workload of absent colleagues.

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Legal News

The new Bribery Bill has employment implications



ORGANISATIONS MAY FACE HEAVY FINANCIAL PENALTIES AND DIRECTORS COULD FIND THEMSELVES IN JAIL IF THEY FAIL TO TACKLE BRIBERY AND CORRUPTION.

Following international criticism of the UK's failure to act against corruption, a new Bribery Bill is currently going through Parliament which replaces old anti-bribery laws that over time have become disjointed and out of date.

For employers, the new Bill means that organisations may face heavy financial penalties and Directors could find themselves in jail if they fail to tackle bribery and corruption.

Whilst the Bill is subject to amendments it is anticipated to be in force by the end of 2010 and proposes 4 offences.

1. Failure by a commercial organisation to prevent bribery by a person who provides services to it.
2. Requesting, accepting or receiving a bribe.
3. Bribing another person.
4. Bribing a foreign public official

Whilst strictly speaking this is not a piece of employment law this may have far reaching consequences for all employers and in particular employers who could find themselves liable for failure to prevent bribery committed by those who provide them with services which could include em-

ployees, consultants or agents.

The legislation does not provide a list of procedures but it does state that it expects company's to take a proportionate risk based approach to the prevention of bribery.

If a company can prove that they had 'adequate' procedures in place this will act as their 'defence'.

So what can employers do to ensure they have procedures in place?

A review of handbooks and procedures should be undertaken as a minimum and, if required, introduce a new anti-bribing policy. It is also worth remembering to review the disciplinary procedure to include bribery as an act of gross misconduct.

Written Terms of Employment should include clauses prohibiting bribery to support this law and wording in the Whistle Blowing Policy should also be considered.

As with any new policy it is then important that these changes are communicated to all employees through email and meetings.

Once these reviews and procedures have been put in place an employer can then feel confident that they are able to provide an adequate defence if an act of bribery is uncovered.

Legal Timetable

COMPENSATION LIMITS FOR UNFAIR DISMISSAL TO REDUCE	1 February 2010
THE SOCIAL SECURITY (MEDICAL EVIDENCE) & STATUTORY SICK PAY (MEDICAL EVIDENCE) AMENDMENT REGULATIONS 2010	Spring 2010
RIGHT TO REQUEST TIME OFF FOR TRAINING (FOR COMPANIES WITH MORE THAN 249 STAFF)	April 2010
EQUALITY BILL	October 2010
MATERNITY PAY AND PATERNITY LEAVE AND PAY TO BE EXTENDED	Awaiting date
AGENCY WORKERS DIRECTIVE	Awaiting date

The City of Edinburgh Council vs Dickson

Mr Dickson was employed by Edinburgh Council and had suffered with type 1 Diabetes for more than 30 years. He was classified as disabled under the Disability Discrimination Act.

In 2007 he was found viewing pornographic material on his pc and at his disciplinary hearing stated that he had no recollection of the incident and that his lack of memory and conduct was due to a hyperglycaemic episode related to his diabetes.

The Council rejected his defence and dismissed him for gross misconduct. Subsequently Dickson issued claims for unfair dismissal and disability discrimination and

won both his claims at Tribunal.

However, at the Employment Appeal Tribunal (EAT) whilst they agreed that his dismissal had been unfair they overturned the Tribunal's decision that Dickson's dismissal amounted to disability discrimination. The EAT held that the Council had failed to take sufficient steps to understand Dickson's explanation or examine the medical evidence available and that if the Council had undertaken a thorough investigation they probably would not have taken the decision to dismiss.

All disciplinaries should be thoroughly and properly investigated.

Keep health & safety real by TEAM Safety Services Ltd

Due to bad press, most people see health and safety as stopping enjoyable activities or preventing employees from working. The truth is, banning activities misses the concept of risk control. Employers typically do not have the knowledge, experience or confidence to implement suitable controls to reduce the risk to an *acceptable level*. It is very easy for a Health and Safety Adviser to highlight hazards and risks but true risk control is not about banning but provides practical and realistic measures to either eliminate or reduce the risk to an acceptable level. *A good Health and Safety Adviser should always come up with solutions not problems.*

It is very important to ensure you keep risk controls *realistic and achievable*. Failure to do so will leave employers at risk. Often health and safety policies, procedures and assessments can never be achieved in the real world. *An unachievable assessment can be as bad as not risk assessing at all.*

Like it or not, health and safety is an essential part of any business but does not have to cost the earth. When an employer looks at the risks within its company it needs to be able to prioritise risks. Risk control has to be cost effective, no company has an unlimited budget for health and safety. Spending needs to concentrate on the real risks and ensure the employer is doing all that is “reasonably practicable” to protect its employees, visitors, contractors and others that could be affected by its acts or omissions. We need to get away from the ‘banning conkers’ thinking and concentrate on the *real risks*.

So what do you need to do to ensure your Health and Safety Systems and Management is compliant?

If you employ 5 or more employees you must have the following in writing and available to all staff, contractors, visitors and any person who could be affected by your acts or omissions:

- **Employers Liability Certificate.** Must be available for all staff to see and displayed in a suitable place.

We need to get away from the ‘banning conkers’ thinking and concentrate on the real risks.

- **Health and Safety Policy** - clearly setting out how you manage health and safety in your workplace by defining who does what, when and how they do it. Be wary of generic policies that have been provided for you or been copied from the internet. It is imperative that your health and safety policy is *specific to your company*. This must include your risks and detail your arrangements for dealing with them. A good health and safety policy ideally should be no more than 20 pages and understandable. Beware of ending up with a 60-100 page policy that has no relevance to your business processes. *Keep it simple and put it into practice.*
- **Health and Safety Risk Assessments.** These are nothing more than a careful examination of what in your work could cause harm to people. Risk assessments should be a *practical exercise*, aimed at getting the right controls in place. Risk assessments have to be specific to your business processes and environment. It is important to include your employees’ knowledge to ensure the assessments are practical and achievable. Consider all types of risk control, it is often true that the most simple and cost effective controls can provide more successful results. *A risk assessment is only as good as the assessor assessing it.*
- **Emergency Planning and First Aid Procedures.** Suitable emergency

plans must be in place, your processes will determine the level and number of Emergency Plans. All companies will require a Fire/Evacuation Policy and action plan. This must be *site specific* detailing the Responsible Person for fire safety and those who manage fire responsibilities. Staff must understand their own responsibilities and what actions they must take.

- **First Aid Procedures** - detailing Responsible Persons for first aid; what first aid provisions are in place; how employees report accidents and incidents; and the person responsible for reporting under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR). The employer has a legal duty to provide its employees with suitable first aid provisions, these provisions will vary depending on the risk assessment of the company’s processes. All accidents/incidents must be reported and recorded within an appropriate Accident Book. Specific incidents/accidents must also be reported under RIDDOR. Your policy must also detail who is responsible for accident investigations.
- **Health and safety communications.** Employers must involve employees when making health and safety decisions or changes. This can be done via health and safety meetings including Health and Safety Representatives (union representatives) or through Representatives of Employee Safety (ROES).

The above is just a starting point. A well managed Health and Safety Management System with realistic and achievable policies and procedures is essential in a business.

TEAM Safety Services Ltd can help you manage your health and safety, providing workable and practical advice. For a free consultation email ellisarnett@teamsafetyservices.com or visit www.teamsafetyservices.com

Avoid own goals in this summer's World Cup



According to research from PriceWaterhouseCoopers, 53% of working males and one in five females (21%) intend to watch the 2010 World Cup live matches scheduled to take place during office hours. Overall, 39% of workers said they intend to watch these games. But have employers thought about how this will be accommodated within the workplace?

Careful planning and fairness is critical. As an employer or manager, you should not presume that all employees share the same interest or non-interest in the World Cup as you and so forward planning is recommended. It is possible that your workforce will support different teams and therefore it would be worthwhile finding out who and when employees wish to take holiday over the period prior to the holiday requests being submitted. If you find out in advance when the games are being played and are realistic in your approach to your employees, you should find that you can manage the time required more effectively and arrange cover in the workplace accordingly. It would also be an opportunity to put some ground rules in place and highlight to employees that any absence due to sickness will be treated seriously and you will expect a justifiable explanation, with supporting evidence in some cases, e.g. doctor's or dentist's appointments supporting the reason for the absence.

As an alternative to employees taking holiday, for some organisations, it may be possible to offer a flexible working arrangement over the period whereby employees make up the time lost at the end or the beginning of the day. If you do choose to allow employees the time to watch games during work time, employers might want employees to state their designated team and then only allow them to watch those games.

If you do find that there are far too many requests for leave over the period, then, in previous years, many employers have found it has been more productive to put up screens in the workplace or encourage some online viewing. However, as the bandwidth to transmit the broadcast will be more than normal everyday usage, online viewing by too many employees could cause IT complications. Once again, it is therefore advisable to speak to employees and your IT provider about their intentions in advance of the games.

Not forgetting those whose interests are not football, consideration should be given to whether other employees who continue to work should be offered an alternative benefit. This would probably need to be some additional time off but it might mean that this could be kept to a minimum if offered by the company rather than an employee bringing it to the management's attention.

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Crucially, beststart brings the letter of employment law to life so it works in practice with hands on solutions in tune with management. We steer management on value adding HR strategy; deal with employee issues like grievances, poor performance, disciplinarys and redundancies; draft employment contracts; and ease the burden on management of the everyday HR administration. Our in depth knowledge of specialist areas of HR like compensation & benefits; mediation; and training & development allows us also to offer quality consultancy services to larger companies.

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