



E-Newsletter

November 2012

Your latest commercial legal update from Ortolan Legal, the virtual in-house law firm

Hello. We thought it was worth looking back this month on the Bribery Act on which we have reported a couple of times previously. It's been in force now for 16 months and there has been only one prosecution (of an individual) under the Act. The run up to Christmas is a period when corporate hospitality is often extended so we thought a considered view on this often misunderstood area might be helpful. There have also been quite a number of developments in the field of employment law and Carrie Beaumont has addressed these for you below. Carrie is now tweeting on a regular basis so if you'd like to stay up to the minute with her stream of consciousness, just follow her at @CarrieBeaumont.

As always, we hope you find our newsletter informative and useful. We welcome your feedback so do let us know if there is a particular topic you would like us to consider in a future issue.

The Bribery Act

Hospitality or bribery?

The Bribery Act came into force in July 2011. It marked a sea change in UK anti-corruption law and (quite rightly in our view) a great deal of advice was given to businesses about what they needed to do to comply and avoid the risk of criminal prosecution. But was this all a storm in a teacup, whipped up by lawyers seeking out lucrative mandates from their clients?

Our view is that it was not; although a certain degree of paranoia does seem to have been created and it is arguable that businesses may in some cases have been over-zealous in attempting to comply – and be seen to comply – with the strictures of the Act. There is no doubt that the Act has to be taken seriously. The UK now has what is probably one of the strictest anti-corruption regimes in the world. Individuals who are convicted under the Act face up to 10 years in jail and an unlimited fine. Companies face an unlimited fine and the possibility of being excluded from participation in public sector procurement.

It is in the area of domestic corporate hospitality where we sense companies are perhaps sometimes being a little more risk averse than might be entirely necessary. The critical distinction to be made when considering hospitality is the intention behind it. If there is any desire to induce or reward a person for the improper performance of their function, then the alarm bells need to be ringing very loudly. If – as is usually the case – the intention is merely to develop a relationship and maintain communication, then the hospitality is unlikely to fall foul of the Act. The fact that an invitation might be seen as generous does not in itself raise a presumption of wrongdoing, although the Ministry of Justice guidance does note that *"the more lavish the hospitality ... the greater the inference that it is intended to encourage or reward improper performance or influence an official."*



Minimum Wage

Increases to £6.19 per hour

Since 1 October 2012 the main rate of the national minimum wage has risen from £6.08 to £6.19 per hour (worker aged 21 and over). The development rate of workers between 18 and 21 remains the same at £4.98 per hour. The rate for workers aged 16 to 17 also stays the same at £3.68 per hour. The apprentice rate increases from £2.60 to £2.65 per hour, and the accommodation offset increases from £4.73 to £4.82 per day.

Equal Pay Claims

Foley v NHS Greater Glasgow & Clyde

The Supreme Court has decided that equal pay claims, which would have been out of time in an employment tribunal as the 6-month time limit had passed, can be brought as breach of contract claims in the civil courts. Claims can now be brought for up to 6 years from the alleged pay disparity. In this case it has meant that 174 equal pay claims which were issued by employees of Birmingham City Council will now be considered by the Courts.

Compensated No-Fault Dismissal

Government says no!

After months of speculation and conflicting ministerial views, the government has formally announced its response to its initial consultation on the idea of a "compensated no fault dismissal" for micro-firms. It has been confirmed that the proposal for no-fault dismissal will not be taken forward and the fair reasons of: "redundancy", "capability", "conduct", "legality" and

That said, different and more rigorous tests apply where the recipient is a foreign public official so companies are well advised to treat those situations with a higher degree of caution.

We are unaware of any corporate prosecutions since the Bribery Act came into force. It is still early days, but we believe that a combination of sensible processes, ongoing risk assessment and training and senior managers setting the 'tone at the top' and leading by example will go a long way towards ensuring compliance. Oh, and once all the legal advice has been assimilated, a healthy leavening of common sense will not do any harm!

Collective Redundancy Rules

Proposed changes

In the summer, the UK department for Business, Innovation and Skills (BIS) launched a consultation on proposed changes to the rules on collective redundancy consultation based around three objectives:

- * Reduction of the 90-day minimum consultation period to either 30 days for all collective redundancies or 45 days for planned redundancies of 100 or more employees.
- * The introduction of a new non-statutory code of practice to address key issues.
- * Review of existing government guidance to ensure that it is accurate and accessible.

We hope that the Government takes a pragmatic approach. From experience, all parties like to proceed with a consultation procedure relatively swiftly. From the employee perspective, as long as time to discuss the proposal is reasonable, arbitrary deadlines often simply prolong the uncertain and difficult period. We will keep you posted about how the consultation concludes.

About Ortolan Legal

Ortolan Legal is a radically different law firm providing pragmatic and commercially focussed legal advice. We are all experienced in-house and commercial lawyers, based remotely so our overheads are kept to a minimum. Our pricing structure is entirely flexible; we will adopt your preferred structure and simply ask to earn a fair margin for our work. We don't charge administrative costs. Dealing with ad hoc work or retainer work, we can assist where there is no in-house legal function and also provide holiday cover or supplement existing in-house legal teams. Our work covers non-contentious company commercial and employment law, contracts, tendering, purchase, supply, distribution, franchising agreements and pre-litigation reviews. We also provide general 'Legal Health Checks' and a 'Legal Hotline' offering legal support for a set number of hours each month.

If you require any advice in connection with the content of this bulletin, or on any other issues, please contact Nick Benson or Carrie Beaumont on 0844 5611 638 or e-mail us at nbenson@ortolangroup.com.

"some other substantial reason" will remain the only fair reasons in law for dismissal.

It is a disappointing move for small businesses who sought the certainty that as long as the prescribed compensation was awarded then there was little risk of a Tribunal claim. However, the employment team here at Ortolan would add that in the majority of circumstances the prescribed "fair reasons" can be adapted to enable a company to make rational business decisions.