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Does the Bribery Act affect you?

The Bribery Act 2010 came into force on the 1st July 2011 making it a criminal offence for an individual or commercial organisation to offer or receive a bribe to bring about or reward the improper performance of a function or activity.

The legislation targets the prevention of the cases of large scale corruption and bribery, involving large multinational organisations that occasionally appear in newspaper headlines and at times lead to custodial sentences for top executives. The Act goes further as it also aims to stamp out facilitation payments that are often paid to low ranking officers (particularly in developing countries) to facilitate the smooth and expedient processing of a service. This is something that has implications for any organisation that operates overseas.

The challenge is enhanced by the fact that an organisation may be liable for bribes paid by its agents and joint venture partners, even if made without the company's knowledge.

However, even if your business is entirely focused within the UK caution is required. Corporate hospitality is not affected so long as it is proportionate and reasonable.

The principles of the Act are:

- Proportionality is the key to ensuring compliance
- Top-level commitment to a zero-tolerance on bribery and communication of this to staff, customers, suppliers etc. Further a senior executive of the firm should be appointed to have responsibility for bribery prevention
- Regular risk-assessment of the nature and extent of exposure to potential external and internal bribery risks
- Due diligence – a thorough examination of third parties acting on the organisation's behalf and their trading partners
- Communication of these measures – including training so that bribery prevention policies and procedures are understood throughout the organisation, and the likelihood that all types of employment contracts will need amending to refer to bribery in the context of gross misconduct/termination
- Monitoring and review all of the above principles regularly.

In order to minimise the risk of being on the wrong side of the Act, companies should put in place:

- Whistle-blowing procedures (setting out how staff raise concerns about bribery and request advice and support)
- Prevention policies to cover financial and commercial controls (invoices, remuneration)
- Prevention policies to cover rules on gifts, hospitality (a reasonable amount of corporate hospitality is still permitted), promotional spend/sponsorship (including charitable donations)
- Procedures on recruitment (including work experience) and discipline/grievance that include anti-bribery measures
- Details of how anti-bribery measures will be enforced.

Minimum Wage Increases

The national minimum wage rates with effect from 1 October 2011 are as follows:

The new hourly rates will be:

- Workers aged 21 and over, £6.08 from £5.93
- Workers aged between 18 and 20, £4.98 from £4.92
- Workers aged 16-17, £3.68 from £3.64
- Apprentices aged under 19 or over 19 and in the first year of their apprenticeship, £2.60 from £2.50

Statutory Payments increases

The rates of statutory sick pay and statutory maternity, paternity and adoption pay were increased on 11 April 2011. The new levels are:

- Statutory sick pay £81.60 per week
- Statutory maternity, paternity and adoption pay £128.73 per week.

The Legal Implications of Social Media

Social media is increasingly becoming a topic of conversation in Human Resources, as sites including Facebook, LinkedIn, Twitter and My Space are used by employees for both personal and business purposes.

Employers should now be accustomed to providing members of staff with a social media policy in addition to the terms included in their contracts of employment.

Such policies should recognise that whilst the internet, in particular social media sites, provide unique opportunities for sharing information and getting involved in interactive discussions, care must be taken to ensure that the employer's reputation is not damaged and that confidential and proprietary information is not put at risk.

Employers should also set limits and expectations for the use of social media and clearly define the consequences of misuse. Any restrictions in use imposed by the employer must, however, be proportionate and realistic to ensure good employment relations are fostered.

Furthermore there needs to be a balance struck between monitoring employees' use of social networking and respecting their right to privacy.

An issue currently gaining attention with social media is the ownership of client and contact lists. Many employees build their personal social media presence during the course of their employment. The fact that these contacts are formed in the employee's own name can prove problematic in terms of their ownership once the employment relationship ends, as employees can easily retain their former employer's clients and contacts on their own personal social media sites. Employers and employees will have different views on the ownership of this data.

This situation is further complicated when a former employee updates his/her profile to show contacts including former employee clients that he/she is now working for a possible competitor.

In the absence of clear contractual provisions an employee may claim the rights to act in this manner. It therefore becomes increasingly imperative for employers to ensure that the use of social media is covered in both HR policies and employee contractors.

Case Study

When can Indirect Religious Discrimination be Objectively Justified?

Cherfi v G4S Security Services Ltd

First and foremost, indirect discrimination occurs whenever a working condition or rule which, whilst applying to all employees equally, has the effect of disadvantaging one group of people more than another. Indirect discrimination is unlawful, whether or not it is done on purpose. Unlike direct discrimination, which can never be justified, indirect discrimination may be permissible it is necessary for the way the business works, and there is no other way of achieving it.

In this case, the employer, G4S Security Services refused to allow a security guard, Cherfi to leave a client's site to attend a mosque on Friday lunchtimes. The employer was contractually obliged to ensure that a specific number of security guards were present throughout operating hours so did not want Mr Cherfi to be absent for any reason during those hours. There was, however, a prayer room on site, which the claimant was free to use and they did offer to change his contract to a Monday to Thursday pattern with the option of Saturday or Sunday work. Mr Cherfi did not; however want to work over weekends so refused this working arrangement. He stopped working Fridays, taking them off as sick leave, annual leave or unauthorised unpaid leave. When his employer told him that this could not continue, Mr Cherfi brought a claim at an employment tribunal. He alleged that the requirement for security guards to be on site at Friday lunchtimes placed Muslims at a particular disadvantage and was therefore indirectly discriminatory on the grounds of his religion.

The Employment Appeals Tribunal (EAT) held that the requirement was objectively justified and therefore not discriminatory. This was largely on the basis that the employer would suffer financial penalties and be at risk of losing the client contract if it failed to ensure that the requisite number of guards were on site. The EAT also took into account that the employer had made a prayer room available and had offered Mr Cherfi weekend work so that he would not suffer financially if he chose not to work on Fridays.