



## NEWS FROM THE HR TEAM



# Changes to the Disclosure and Barring Service (DBS)

From 1 July 2014 the documents to be provided by applicants to the DBS has changed.

Under the new guidelines, applicants now have three routes available to them for ID checking. Where applicants are unable to produce documents under route three, their details will be sent to the Police for finger-printing. The new guidelines can be viewed on the [www.gov.uk](http://www.gov.uk) website



# Health and Work Service from October 2014

The Health and Work Service which will offer free occupational health service to employees, employers and GPs is being introduced from October 2014 in certain geographical areas in the UK.

This service will provide a more readily available guidance to employers and employees with an aim to enable them to manage sickness at work. The Service will be funded by the government and will be available for employees who are off sick for four weeks or more.



# Equal Pay Audits

Employment Tribunals will be able to order equal pay audits in cases where employers have been in breach of the equal pay provisions under the Equality Act 2010. This will be effective for complaints made to the Tribunals on or after 1 October 2014. The following exception will however apply;

- Where the employer is able to show that the equal pay audits, as specified in the Regulations has been completed in the previous three years;
- Where it is clear to the Tribunal what, if any, action is required to avoid equal pay breaches that may be taking place; transfer giving employers a breather before transfer

- Where the particular breach may be a one-off and the Tribunal has no reason to think there are more breaches;
- Where the disadvantages of an equal pay audit would outweigh any benefits.

Another key point to note is that new businesses, as defined in the Regulations, and micro-businesses are exempt. Finally it will ultimately be down to the Tribunals to decide whether or not a particular equal pay audit is compliant to the Regulations and non-compliant employers will be required to pay a penalty.

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## BBi Group News

The Old Court House, 191 High Road, South Woodford, London E18 2QF

Telephone: 020 8559 2111  
Facsimile: 020 8502 9888  
Email: [enquiries@bernsbrett.com](mailto:enquiries@bernsbrett.com)  
[www.bbicover.com](http://www.bbicover.com)



## Changes to the National Minimum wage (DBS)

**From 1 October 2014, the NMW is set to increase in line with the Low Pay Commission's recommendation to the Government. The following will be the new rates;**

For workers 21 years of age and over the rate will increase from £6.31 to £6.50. For workers aged 18 until 20 years, the rate will increase from £5.03 to £5.13. For workers aged 16 to 17 years of age, the rate will increase from £3.72 to £3.79.

The apprentice rate will increase from £2.68 to £2.73 for apprentices who are under 19 or if over 19, then in the first year of their apprenticeship.

## O'Doherty v RBS – unfair dismissal and disability discrimination

This case highlights why it is important for employers to consider sickness absence related to a disability and its impact on the disciplinary procedure. The employee was absent for prolonged periods due to depression through early 2010. In February that year, the employer started disciplinary proceedings when it was revealed that the employee had wrongfully divulged customer information to a relative and had also upgraded the relative's account to avoid a monthly charge. The employee claimed to be stressed and felt that he should have been accompanied during the investigation meeting.

RBS sought the opinion of an Occupational Consultant who suggested reasonable adjustments be made and that the employer should consider postponing the disciplinary hearing until the employee had started his counselling sessions. After postponing the initial disciplinary hearing, the meeting was then held on 3rd June 2010 and the employee was subsequently dismissed. The Tribunal held that while the allegations were serious and the employer had sufficient evidence, RBS failed to consider the employee's health and that of the Occupational Consultant. RBS should have postponed the hearing until he was better and

they had sought further medical advice on the employee's ability to attend the meeting. By holding the investigation and disciplinary meetings when the employee was clearly unwell and had expressed that he needed more time, they had put him at a significant disadvantage.

The employer appealed but the EAT dismissed the appeal on the ground that given the disability, the employee was put at a significant disadvantage by the employer.

## FAO, Acting on behalf of Karsten Kaltoft v Billund Kommune 2013

This is a Danish case that has been referred to the European Court of Justice. It is significant to UK employment law as it refers to the question of whether or not obesity is covered under the Equal Treatment Directive Framework. In a previous case, the UK court had held that obesity by itself is not a disability but an

impairment suffered by an individual could be seen as a disability. The ECJ in this case has been asked to determine whether or not there is a prohibition under EU law to discriminate against obesity in the labour market and further whether obesity can be deemed to be a disability under EU legislation. While a full

decision by the ECJ is awaited, the Advocate General has given his opinion on the matter. He has stated that while there is no general principle prohibiting discrimination on grounds of obesity, morbid obesity may be seen as a disability as it may hinder an employee's full participation in his or her profession.