



## NEWS FROM THE HR TEAM



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# Third Party Harassment provision in Equality Act 2010 repealed

In our September 2012 newsletter we mentioned that the government was consulting on its proposal to repeal third party harassment. We can now confirm that as of 1 October 2013 under the Equality Act, the provisions making employers liable for harassment of employees by third parties has been repealed. Under the Act employers were liable for third party harassment where:

- the third party harassed the employee on two occasions;
- the employer failed to take reasonable steps to prevent the harassment knowing that it has happened

The reason for repealing the above provisions was because the government felt that there was "no evidence to suggest that the third-

party harassment provisions are serving a practical purpose or are an appropriate or proportionate manner of dealing with the type of conduct that they are intended to cover". This however does not make the employers any less liable for claims of bullying or abuse from employees against customers and suppliers. Employees can still bring a claim for third party harassment so in reality repealing the provision by the government may not bring desired results.



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# Transfer of undertakings protection of employment (TUPE)



Following consultation by the government on proposed changes to the Transfer of Undertakings and Protection of Employment Regulations 2006, the changes mentioned below are expected to come into force in early 2014;

- Provided that the changes are no less favourable to employees, employers to be allowed to renegotiate terms derived from collective agreements one year after transfer
- Where employees have terms and conditions provided for in collective agreements, only the terms and conditions in the collective agreement existing at the time of the transfer will apply to the employment with the new employer
- Service provision rules will not be repealed
- Where the place of work changes after the transfer, any redundancies due to that change will not be automatically unfair

- Small businesses can continue to inform and consult with their employees directly in the absence of a recognised Trade Union or Employee Representatives

These changes are aimed to reduce red tape and promote employment opportunities and growth amongst UK businesses. Please visit <https://www.gov.uk/government/consultations/transfer-of-undertakings-protection-of-employment-regulations-tupe-2006-consultation-on-proposed-changes> for more information on the consultation and responses to the proposed changes.

## National Minimum Wage

From 1 October 2013, NMW has increased to

- £6.31 for those aged 21 and over
- £5.03 for those aged between 18 and 20 years
- £3.72 for those under 18 years of age
- £2.68 for apprentice



## Help to manage sickness absence



**Under proposals from the government, help may soon be at hand for employees, employers and GP through a free service providing occupational health assistance.**

The health and work assessment advisory service may be used after four weeks of sickness related absence and is expected to be delivered in 2014. According to the government response document, the service will include;

- a State-funded assessment by occupational health professionals for employees who are off sick for four weeks or more;

- signposting to appropriate interventions including Universal job match, an online job search service for those employees who are able to work, but unlikely to return to their current employer;
- case management for those employees with complex needs who require ongoing support to enable their return to work.

For more information, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/181072/health-at-work-gov-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181072/health-at-work-gov-response.pdf)

## Tribunal claims and conciliation

**Currently ACAS provides a voluntary pre-claim conciliation service.**

Under the Enterprise and Regulatory Reform Act 2013, from April 2014 anyone wishing to lodge a claim in the tribunal will have to go to ACAS first. ACAS will offer conciliation and if unsuccessful, the claimant can then lodge a claim with the tribunal within a specified period of time.



## Case Law

### **Usdaw v Ethel Austin Ltd (in administration); Usdaw and another v Unite the Union and others [2013]**

**This case is significant for employers with multiple locations proposing redundancies of 20 staff or over. It questions whether an employer is in breach over duty to consult in a collective redundancy situation.**

Former employees of Clothing retailer Ethel Austin and Woolworths which went into administration claimed the companies failed to consult collectively on the redundancies. The Employment Tribunal dismissed the claims of those employees whose establishments were fewer than 20 workers. The ET held that under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C) A), collective redundancy consultation is required only where 20 or more redundancies of employees "at one establishment" within a period of 90 days or less is proposed. This led to around 4,400 employees not being paid protective awards.

The Claimants appealed to the Employment Appeals Tribunal on the grounds that the domestic provisions were more restrictive than the directive itself. They further argued that the definition of establishments should be so

as to advance the core objective of protecting workers' rights. On appeal, the EAT held that the words 'at one establishment' ought to be deleted from Section 188 of the Act. This ruling will have a considerable impact on large companies with multiple sites who need to ensure that they consult over a 90-day period when proposing redundancies of 20 or more staff. With severe penalties for breaching the collective consultation obligations, employers must begin their consultation process as early as possible and treat different locations or divisions as one establishment.

### **Little v Richmond Pharmacology Ltd [2013]**

**The claimant put in a flexible working request following her return from maternity leave in 2010.**

Her request was initially rejected on the basis that it was not practical for a Sales Executive to work on part-time. She appealed against the decision and subsequently resigned. She was however asked to reconsider and wait until the appeal meeting. At the meeting which the claimant attended, her appeal was upheld. The Claimant did not take up the offer and confirmed her resignation. She filed a case of indirect sex discrimination which was not held by the Employment Tribunal on the grounds

that the "PCP" (provision, criterion or practice) criterion applied in her case and also that she was not in any way disadvantaged as the appeal upheld her request.

The claimant appealed to the EAT which considered that under the Sex Discrimination Act 1975 (as the case was prior to October 2010), indirect discrimination occurs when a PCP puts one gender at a particular disadvantage when compared to the other (women to men in this case) and specifically putting an individual employee at a disadvantage. The employer would also be unable to show that the PCP is a proportionate means of achieving a legitimate aim. The EAT upheld the ET's decision. This case is a reminder to all employers to carefully consider all flexible working requests and to adhere to its flexible working policy. While the above case is very specific, it nevertheless highlights the importance of having the right procedures in place, thus avoiding costly tribunal claims.



Over the last couple of years the number of cases reaching Tribunal has hugely increased, it is thought to be by more than 50%. Many of you may have experienced this for yourselves, the increases being driven by disputes about equal pay, unfair dismissal, age, sex, race and disability discrimination.

With this being high on the agenda, we are able to offer our clients with not only hands on consultancy but also, an insured/legal expenses cover of up to £75,000 per claim.

**For further information please contact Michelle Brinklow at BBi Risk Solutions:**

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## NEWS FROM THE LIFE DEPARTMENT



# Let's Talk Pensions

Auto Enrolment is now well under way with already more than 1 million eligible job holders auto enrolled in the 12 months to June 2013, from some 1,153 registered organisations

These are all macro size companies with big HR departments who have been preparing for some time. The frightening thing is however, the Pensions Regulator (tPR), has launched 89 investigations into non compliance already. These employers will have spent considerable time and money to get things right, yet have still got things wrong.

What help is there then for the SME employer who hasn't necessarily got the same resources at hand, who, may not even have an HR department?

The good news is that at BBi we can help you prepare for auto enrolment to avoid making mistakes that could prove to be very costly. But, beware; time is your enemy as by 2015 135,000 employers a month will reach their staging date.

You need to prepare sooner rather than later and talk to us early.

These are some of the things which are by no means an exhaustive list, of what you will need to consider:

- Do I use postponement? If so how long shall I postpone for?*
- Does my existing pension scheme meet the qualifying rules?*
- Who shall I select as my auto enrolment default scheme provider?*
- What default fund shall I select?*
- How will I educate my employees on auto enrolment?*
- How will I know if my scheme demonstrates good value for money?*
- How can I ensure that communication issued to staff is good enough quality?*
- How do I know what category of worker my employees are?*
- How do I keep records for 6 years?*
- What do I have to tell my employees?*
- Do I want to sectionalise my scheme?*
- How will I issue communication and evidence that I have done so?*

**We can help you be ready and avoid the many pitfalls and engage with employees compliantly.**

**Please contact Sarah Herd who will be happy to discuss with you on 020 8559 2111 or email [sarah.herd@bbiemployeebenefits.com](mailto:sarah.herd@bbiemployeebenefits.com)**

## NEWS FROM THE COMMERCIAL TEAM



# Winter Weather Precautions

## Understanding the Risk

**Every winter, businesses suffer millions of pounds worth of damage caused by adverse weather conditions.**

The term 'Winter Weather' embraces a wide range of natural conditions, which may result in significant loss or damage to your premises and cause a serious interruption to your business.

This guide deals with the main weather conditions which give rise to potential damage, and sets out practical steps which can help reduce the risk of damage, and help minimise the cost of any damage that does occur:

- Freezing temperatures, causing bursting of water pipes and tanks
- Storm
- Flooding
- Snow

### Controlling the Hazards

The following precautions and measures should be taken to control the risks:

#### Burst Water Pipes and/or Tanks

- Where possible, maintain an adequate level of heating (minimum 4°C) to prevent the freezing of water pipes and tanks. Heating systems should be regularly serviced prior to the onset of winter. Install thermostats and frost stats if not already in place.
- Where adequate heating cannot be maintained, or in unheated areas, all water pipes and tanks should be adequately lagged with good quality lagging to BS6700, or trace heated where practical.
- Ideally, portable heaters should not be used and your insurers may have restrictions relating to the use of such heaters. If there is no alternative please refer to your usual account executive.
- See that building insulation is in place, windows are not broken, and openings are sealed.
- If the building is to be unoccupied for a lengthy period of time (i.e. over a holiday period) and it is not practical to maintain the heating system, turn off the water

supply and drain the water system.

Regularly inspect or arrange inspection of any unoccupied premises.

- Ensure that all stopcocks are in working order, can be turned on and off safely and that all relevant staff know their whereabouts. Find out how to drain the system. Repair leaking taps by fitting new washers.
- Consider the installation of water loss detection alarms and shut-off valves, particularly to protect sensitive computer equipment or plant. Such alarms should be linked to an alarm receiving centre.
- Sprinkler installations need special attention and any specific instructions and maintenance requirements should be followed. Please refer to the 'Automatic Sprinkler Systems - Winter Precautions' guide.
- Ensure any temperature sensitive materials are adequately stored.
- Air conditioning units can produce large volumes of condensed water. For externally mounted units, this is generally not a problem, but the small units often fitted internally to computer/communications areas can cause serious problems, as their drain lines can easily be disconnected accidentally.
- If a pipe does freeze, always isolate the pipe by closing the stopcock on the feed from the tank or main. NEVER use blowlamps or any forms of naked flame to thaw a frozen pipe.

Before you start to thaw the system, do what you can to protect or remove contents which might be damaged by thawing water running from a burst.

### Storm

- Keep track of severe weather warnings.
- Check that buildings are sound and in good condition, including doors, windows and skylights.
- Inspect trees which are close to the buildings. Remove unsafe trees and branches.

### Flooding

- The environment Agency is the primary source of information and advice for areas liable to flooding. If available, register with the Environment Agency Floodline for early warnings of flood threats.  
[www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)
- Stock, machinery and other contents which are susceptible to water damage should, where possible, be stored on upper floors. Where this is not practical, store as much as possible on pallets or racking in order to reduce the possibility of damage.

### Snow

- Plan for safe methods of snow removal from roofs. Clear accumulations before they reach unsafe loading.

### General

- Arrange an annual inspection and maintenance contract to ensure roofs, flashings, gutters, downpipes, drains and gullies are in good condition and free from blockages.
- Plan for weather-related incidents:
- Prepare an emergency plan, to include preventative measures
- Establish an emergency response team
- Ensure that your Business Continuity Plan is up to date and covers weather-related incidents
- Ensure critical documents and data are safely stored
- Maintain an up to date list of emergency contacts
- Consider providing generators as back-up power supplies for any critical operations.

Inspect your buildings for damage after any weather-related incident, and carry out any necessary remedial work.

**For further information please contact  
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# Workplace Pensions: We're all in!

# BBi

Is your business ready for auto enrolment?  
What if your staff want in?

**Even if you employ only one person, you are required by law to offer a workplace pension. This could be a logistical nightmare and getting it wrong could be very expensive – or even a criminal offence!**

Do you already offer your staff a pension scheme?

**YES**



Is it fit for purpose?



You need a scheme audit

**NO**



You will need to set up an auto enrolment scheme

**BBi have a competitively priced solution for all your auto enrolment requirements.**

## Want to know more?

Visit [bbiemployeebenefits.co.uk/automatic-enrolment](http://bbiemployeebenefits.co.uk/automatic-enrolment) for more information or contact me as soon as possible to find out how we can help get your business ready:

Email [Sarah.Herd@bbiemployeebenefits.co.uk](mailto:Sarah.Herd@bbiemployeebenefits.co.uk)  
or call 020 8559 2111

