



BRIBERY ACT 2010

Bribery Act 2010 comes into force in April 2011. Government guidelines are still awaited, in the meantime companies could review their current financial controls, whistle blowing and anti-corruption policies, clear procedures on gifts and corporate hospitality, risk assessments.

So, what constitutes a bribe?

This is a financial or other advantage which is promised or given with the intent to, obtain or retain business or gain an advantage in the conduct of business; and/or induce or reward improper conduct.

A bribe can be offered, directly or indirectly and can include practices such as corporate hospitality and sponsorship.

What are the penalties?

The penalties under the Act can be very severe. Individuals can face a fine, or up to ten years imprisonment, or both! Corporate entities could face unlimited fines and could also find them unable to win any future public contracts.



HUMAN RESOURCES - SUPPORTING YOUR BUSINESS

Bribery act 2010

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ADDITIONAL DAY'S PUBLIC HOLIDAY IN APRIL 2011

While an additional day's holiday is declared for 29 April 2011, unless the employment contract allows it, employers are not obliged to include the additional day in the 28 days statutory entitlement.

If the organization decides to remain open, staff can be allowed to take the day off as an annual leave and it would have to be booked the same way as any other day.

If it decides to close for the day, staff would need to be informed that this day would be taken off their annual leave entitlement.

Where an employment contract provides for 20 days plus bank holidays, then the employee will be entitled to the Royal Wedding Bank holiday in addition to the usual 8 bank holidays. Where the contract says 28 days, there will be no contractual right.

DEFAULT RETIREMENT AGE

Employees who are due to reach the statutory retirement age of 65 before 1 October 2011 could still be issued with notices of their intended retirement as long as it is done before 6 April 2011 (with a minimum of 6 months notice to the employee).

For notices issued to employees whose retirement age (65 years) is on or after 1 October 2011, it may not be possible to retire them as is the current practice as the default retirement age will be abolished. The dismissal process will be the same as for any other employee and the reason for dismissal should be fair.



ADDITIONAL PATERNITY LEAVE AND PAY

From April 2011, Fathers, whose children are due to be born/adopted on or after April 2011, are entitled to additional paternity pay and leave.

The eligibility criteria for additional paternity pay and leave is the same as for ordinary statutory paternity pay and leave. With the new change, eligible fathers will be able to take up to 26 weeks additional paternity leave if the mother or partner decides to return to work before the end of Statutory Maternity Pay period, Maternity Allowance period or Statutory Adoption Pay period.



TIME OFF FOR TRAINING

The right to time off for training was applied from April 2010 to employers with 250 or more staff. This will now be extended to all employers effective April 2011.



CONTRIBUTORY STAFF PENSIONS FOR ALL

Soon all employers will be required to automatically enrol all employees into a qualifying pension scheme and make contributions to it.

Employers will have to contribute 3% of its employee's salary to their pension scheme.

This scheme will be introduced on a sliding scale from October 2012. It will start with large organisations, 120,000 employees or more, it will then apply to employers with 50 employees or less between 2014 and 2016.

TIMETABLE AND STATUTORY RATES

- Effective January 2011, employers will have to pay any travelling and subsistence expenses on top of NMW rates of pay.
- From April 2011, regardless of the age or disability of the child, flexible working will be extended to parents of children aged 17.
- From April 2011 statutory maternity pay (SMP), statutory adoption pay (SAP) and statutory paternity pay (SPP) will increase from a weekly rate of £124.88 to £128.73. The earnings threshold for these benefits will increase from £97 to £102.
- From April 2011 the weekly rate for SSP will increase from £79.15 to £81.60. The above earnings threshold will also apply to SSP.
- The personal allowances for those aged 65 and under is to increase by £1000 in April 2011 to £7495.
- From February 2011, the following are the increases to tribunal award limits:
 - o The maximum compensatory award for unfair dismissal increases from £65,300 to £68,400.
 - o A week's pay for the purpose of calculating the basic award for unfair dismissal and redundancy payments increases from £380 to £400.
 - o The daily rate for guarantee pay increases from £21.20 to £22.20.



INFLATING REDUNDANCY SCORING FOR FEMALE ON MATERNITY

It seems that many employers feel inclined to be ultra kind when dealing with maternity leave matters. Eversheds were found to have discriminated against a male employee on the grounds of sex, when it inflated the redundancy scoring of a female employee, to take account of the fact that she had been on maternity leave.

The male employee had been placed in a selection pool, alongside the female employee who was on maternity.

Some of the information was not ascertainable due to the maternity leave, so the company gave a higher score to the female employee for a particular criterion. This then led to the male employee scoring lower and ultimately being dismissed by way of redundancy.

The Employment Tribunal found that inflating the female colleagues score amounted to less favourable treatment on the grounds of sex and that the claimant had been discriminated against and unfairly dismissed.



RESOLVING WORKPLACE DISPUTES – PUBLIC CONSULTATION

Key proposals set out in the consultation:

- Giving businesses greater confidence to hire new staff by increasing the qualifying period for employees to be able to bring a claim for unfair dismissal from one to two years - this will also ultimately reduce the number of disputes that go to Employment Tribunals;
- Encouraging parties to resolve disputes between themselves as early as possible – requiring all claims to be lodged with Acas (Advisory, Conciliation and Arbitration Service) in the first instance to allow pre-claim conciliation to be offered. This also includes introducing settlement offers to

encourage parties to make reasonable offers of settlement to avoid Tribunal hearings and encouraging parties to consider other forms of early dispute resolution such as mediation;

- Speeding up the tribunal process – extending the jurisdictions where judges would sit alone to include unfair dismissal, introducing the use of legal officers to deal with certain case management functions and taking witness statements as read. This will result in Employment Tribunal resources being used more efficiently and allow cases to be listed and heard more quickly, saving time and cost; and

- Tackling weak and vexatious claims – providing the Employment Tribunals with a range of more flexible case management powers so that weaker cases can be dealt with in a way that does not mean disproportionate costs for employers.

There is also a commitment for the Ministry of Justice to consult separately on introducing fees for Employment Tribunal cases and appeals, to ensure that users contribute towards the cost of running the system.

Further information can be found at Department for Business, Innovation and Skills



AGENCY WORKERS DIRECTIVE

Effective October 2011, agency workers will have equal rights as other employees, with regards to basic working and employment conditions.

Equal treatment refers to pay, working hours, overtime, breaks, rest periods, holidays, access to training and facilities such as childcare. It also includes an agency worker's entitlement to be informed of any relevant vacancies in the organisation.

There is a 12-week qualifying period and a break of six weeks or less will not affect qualification for equal treatment. Organisations and their agencies will both be liable to the extent to which it is their responsibility for failure. Official guidance to help organisations understand the Regulations has not yet been released.

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 Alternative Solutions:

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