

Swine flu – pandemic or panic in the workplace?

Despite a recent plateau in the number of newly diagnosed swine flu cases, a big surge in infection rates is expected in the autumn and the knock-on effect to the business community could be significant. HR professionals may also need to be prepared to tackle panic as well as pandemic in the workplace.

Businesses will need to prepare for the possibility that unusually high numbers of staff may take time off having contracted the flu virus or because they need to care for sick dependants. Equally, employers may need to restore a sense of perspective in the workplace about the risks of infection and, in particular, ensure that employees continue to respect their colleagues' privacy in relation to any reasons for absence. A measured approach is called for which should take account of the following:

- Employers should be mindful of health and safety obligations - clear communication with staff will encourage a sense of perspective and help to quell any panic. The Department of Health has produced guidance that could be circulated to employees to help raise awareness about the symptoms of the virus.
- Whilst absence is disruptive to the workplace, infected staff should be told to stay at home until fully recovered rather than struggle into work.
- Special consideration may need to be given to particular groups, such as pregnant workers, although current Government advice is for pregnant women "to carry on life as normal."
- Employers should reinforce good hygiene practices and ensure appropriate cleaning processes are adopted within the workplace.
- Businesses may wish to implement or review business continuity plans in the event that, for example, school closures take place which may prevent working parents from attending work. This may include looking at home working arrangements.
- Employees should be reminded to respect their co-workers' right to privacy and not speculate as to any reasons for absence.

The Health Protection Agency has produced guidance for businesses on dealing with the risks and provides a sample risk assessment. This can be downloaded at:

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_097137

Essentials Of Employment Law Workshop

On Tuesday 22nd September 2009, solicitors from Thursfields Employment Law Department will be running a free workshop on the Essentials of Employment Law in conjunction with Worcester Chamber of Commerce. The course will look at employment issues from recruitment to dismissal and give a brief overview of handling workplace problems through disciplinary or grievance procedures. The event will be held at Severn House, Prescott Drive, Warndon House, Worcester WR4 9NE. Places are limited so if you would like to book a place please contact njones@thursfields.co.uk.

When is an employee dismissed?

The case of *Gisda Cyf v Barratt* which was recently considered by the Court of Appeal gives guidance on the effective date of termination (EDT). The EDT is important for establishing the date by which an employee, who has been dismissed, must present a claim for unfair dismissal to an Employment Tribunal.

Background

Miss Barratt attended a disciplinary hearing on Tuesday 28th November. She was told to expect a letter about her possible dismissal that Thursday. The letter confirming her dismissal arrived on Thursday by recorded delivery while she was away. Someone else signed for the letter and Miss Barratt did not see the letter until she opened it on the following Monday, the day after she returned. She had telephoned home during her time away but had not asked about the letter. Miss Barratt brought a claim for unfair dismissal within 3 months of the date on which she opened the letter but not within 3 months of the date on which it was written, posted or delivered. The issue of whether her claim was out of time was considered as a preliminary issue.

Outcome

The Tribunal accepted that the claim had been brought within the required time limits relying on the earlier decision of *Brown v Southall and Knight*, that the decision to terminate employment is effective when communicated. Miss Barratt would not have been able to rely on this if she had gone away deliberately to avoid opening the letter but she had no obligation to ask about the letter over the telephone.

The employer unsuccessfully appealed the decision to the Employment Appeals Tribunal (EAT) and then to the Court of Appeal. The Court of Appeal agreed (although there was one dissenting judgment) with the Tribunal and the EAT and concluded that dismissal was effective when communicated.

Comment

Despite the dissenting judgment, the Court of Appeal acknowledged the need for certainty about the EDT. It is the employer who bears the risk where there is ambiguity and it is the employee's actual knowledge of the dismissal that is required for the dismissal to be effective. Employers should ensure that any dismissals are confirmed to the employee as promptly as possible.

Consultation on false self-employment in the construction industry

On 21st July 2009, HMRC and HM Treasury published a joint consultation paper setting out the government's proposal to tackle false self-employment in the construction industry. The government believes that between 200,000 and 400,000 construction workers are falsely described as self-employed and this loses the exchequer around £350 million a year.

Whether a person is an employee or self-employed is a question of fact. Case law has provided a number of principles to assist in determining an individual's status and this will still be used to establish their status for the purposes of employment law but the consultation proposes treating the worker as receiving employment income unless the worker satisfies certain criteria.

The consultation paper can be found at:

http://www.hm-treasury.gov.uk/d/consult_falseselfemploymentconstruction_200709.pdf

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