



Thames North Synod

EMPLOYMENT NEWSLETTER Autumn 2008

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Please share this newsletter with your Church Secretary and other church members who are involved in employment matters.

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a Recent Legal Changes

- ◆ The Sex Discrimination Act 1975 (Amendment) Regulations 2008 came into force on 6 April 2008. See "Issues Under the Spotlight" for more detail.
- ◆ The ability of employers to count public holidays as part of the legal minimum holiday entitlement has been removed. From 1 October 2008, public holidays must be granted i.e. a minimum of 28 days paid holiday for fulltime employees. Note: there is a limited period to pay in lieu for backdated additional holiday.
- ◆ The European Court of Justice has held an employee may be discriminated against by association with a disabled person. The case of Coleman v Attridge Law concerned an employee who claimed she was less favourably treated in respect of her lateness and absence record due to a disabled son.
- ◆ Information and Consultation of Employees Regulations 2004 apply to all organizations with more than 50 employees from April 2008.
- ◆ The Maternity and Parental etc and Paternity and Adoption Leave (Amendment) Regulations 2008 came into force on 23 July 2008. They give the same rights to non-pay benefits to those on additional maternity and adoption leave as to those on ordinary maternity leave from 5 October 2008. The provisions do not apply to pension contributions, which are payable only during any period of paid leave.
- ◆ Introduction of a points-based system by the Borders and Immigration Agency for sponsoring immigrant workers: you will have to become a registered

sponsor in order to obtain Certificates of Sponsorship (a virtual document replacing the current work permit) for prospective non-EEA applicants. More details on the website www.ukba.homeoffice.gov.uk/employers. Information on checking legality of right to work status is in "Issues Under the Spotlight".

b *Future Legal Changes*

- ◆ Plans to give agency workers equal treatment to employees under the Agency Workers Directive (AWD). This will mean that when an agency worker has been in a job for 12 weeks, s/he will be entitled to the same pay and basic employment conditions (but not to company sick pay or pension schemes).
- ◆ Plans to give workers with a minimum of 26 weeks' service the right to request time off for training. This is to encourage employees to develop their skills, and to help them to become more productive in the workplace. Possibly 2010.
- ◆ The increase to 12 months for Statutory Maternity Pay, maternity allowance and Statutory Adoption Pay periods is delayed to April 2010.
- ◆ Regulations to provide fathers and adoptive fathers with up to 6 months paternity leave, if the mother returns to work before the expiry of leave entitlement (date still not yet confirmed)
- ◆ Retirement age is likely to be reviewed to consider whether the default of age 65 or any age is still necessary, in 2011. Possible rise in State Pension Age.
- ◆ Reform of pension provision, including automatic enrolment in personal pension scheme, matching employer contribution.
- ◆ Changes to National Insurance and the relevant treatment of pensions contributions in this regard.
- ◆ Change to the school leaving age to 18: employers wishing to employ 16/17 year olds will need to ensure that such employees will be participating in accepted training during the employment.

NOTE: there are some signs that the current economic situation may slow the development and/or implementation of the above.

c *Issues under the Spotlight*

➤ **Sex Discrimination**

The Sex Discrimination Act 1975 (Amendment) Regulations 2008 came into force on 6 April 2008 introducing amendments to the Sex Discrimination Act 1975 as follows:

- Definition of harassment changes from where a person subjects a woman to harassment "on the ground of her sex" to "related to her sex or that of another person." A complaint of harassment under the Act no longer has to be on the ground that the person making the complaint (the complainant) is a woman (or man) who has been harassed. The change of definition means the unwanted contact need not be directed at the complainant. The complainant could be witness to another person being harassed.
- An employer who fails to take reasonably practicable steps to protect employees from 3rd-party harassment related to sex will be treated as himself subjecting the employee to harassment, where the employer knows that such harassment has occurred on at least two other occasions.

Although 3 occasions of harassment are required it need not be the same person causing harassment on each occasion. You need to be aware of this extension of liability.

- Removal of the requirement of a non-pregnant comparator where a woman claims less favourable treatment on the ground of pregnancy or maternity leave.
- Changes relating to terms and conditions during maternity leave:
 - non-payment of discretionary bonus during maternity leave will be discriminatory;
 - non-pay benefits continue to apply during additional maternity leave (AML) as well as ordinary maternity leave (OML). This not only affects benefits such as health insurance but AML should be counted for the purposes of accruing contractual annual leave and continuity for benefits based on length of service.

➤ **CCTV in the Workplace**

Use of CCTV in the workplace is covered by the Data Protection Act (1998).

You may use CCTV so long as you have taken reasonable steps to let employees know that the monitoring is happening, what is being monitored and why it is necessary. If you monitor activities at work it should be enough to meet the purpose of the monitoring, and no more. Choose camera equipment and locations to achieve only the purpose.

Ensure you have communicated any monitoring methods to staff, and that these are specified in company policies and detail consequences of inappropriate activities caught on CCTV. Cameras must be routinely maintained and images captured by CCTV must be accurate, of good quality, stored safely and subject to restricted access.

➤ **Checking Immigration Status**

The Immigration Asylum and Nationality Act 2006 came into force on 29 February 2008 replacing The Asylum and Immigration Act 1996 with the aim of making it more difficult for illegal workers to remain in employment and of strengthening the powers of the Border and Immigration Agency (BIA) to take enforcement action against employers.

2 new offences have been created: of negligently employing an illegal migrant, with civil penalties of up to £10,000 per worker attached; and of deliberately employing an illegal migrant, with an unlimited fine and/or imprisonment. Trustees may be personally liable if there is neglect, connivance or consent to the employment.

It is unlawful to employ anyone subject to immigration control who has not been granted leave to enter or remain in the UK or whose leave is invalid or has ceased. A person subject to immigration control requires leave to enter or remain in the UK under the Immigration Act 1971. Excluded are British or Commonwealth citizens with the right of abode, nationals of the EEA and Switzerland (EEA nationals from Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia may need to be registered or authorised to work).

There is a defence, "the statutory excuse", if the employer has checked a worker's entitlement to work legally in the UK prior to employment and verified and retained

copies of relevant documentation. The statutory excuse will not be available if, at any point, you knew the worker was employed illegally.

To establish entitlement to work you must check documentation from lists A and/or B in the statutory order. **List A** documents include passports or national identity cards saying that the holder is a British Citizen, a Commonwealth Citizen with a right of abode or national of the EEA or Switzerland and production of a list A document will be sufficient to establish a statutory excuse. **List B** contains documents that indicate the holder has restrictions on his or her entitlement to be in the UK and include a passport or travel document stamped with a work permit.

The onus is on you to obtain sufficient documentation e.g. a birth certificate combined with a document listing a UK national insurance number or a work permit and a passport to establish ability to work. If you rely on list B documents you must re-check the documents at least once a year to ensure employees continue to have leave to enter or remain in the UK.

You must take reasonable steps to verify and retain copies of the documents produced to you. If you are unsure of the validity of any document you should contact the Employer Checking Service run by the BIA and the Identity and Passport Service. Copies of documents must be made and stored for at least two years following the end of employment.

If a civil penalty is imposed the level of penalty will take into account whether you have carried out full, partial or no checks.

I urge you to apply the same checks as part of the normal recruitment process to all applicants regardless of apparent status, to avoid suggestions of discrimination.

Further information: www.bia.homeoffice.gov.uk

d Latest Published Statistics

- Earnings Threshold for the employer to have to deduct PAYE and NIC: £105.00 per week from April 2008
- Lower Earnings Limit (LEL) is £90.00 per week from April 2008. This is the minimum level for the employee to qualify for benefits
- The employer must keep a record of payments, if earnings are at or above LEL but below Earnings Threshold i.e. between £90-105.00 per week
- National Minimum Wage from 1st October 2008:
 - Employees aged over 21 yrs, £5.73 p hr
 - Employees aged 18-21 yrs. or 22+ on accredited training £4.77 p hr
 - Employees aged 16 & 17 yrs. £3.53 p hr
- Statutory Parenting (Maternity, Paternity, Adoption) Pay: standard rates are £117.18 per week (or 90% of average earnings if less) from 6 April 2008
- Retail Price Index (all items) rose 5.0% to September 2008
- Retail Price Index (excl. mortgage interest) rose 5.5% to September 2008
- Consumer Prices Index rose 5.2% to September 2008
- UK Average Earnings Index rose 3.2% to August 2008