



Thames North Synod

EMPLOYMENT NEWSLETTER

Summer 2009

- a** Recent Legal Changes
- b** Future Legal Changes
- c** Issue under the Spotlight
- Discipline and Grievance
- d** Latest Published Statistics

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

Contact (Tuesdays to Thursdays):

Carla Watts Human Resources Coordinator 020 8839 9410

Email: employment@urcthamesnorth.org.uk

a Recent Legal Changes

- Statutory Disciplinary, Dismissal and Grievance Procedures were replaced by a new ACAS Code of Practice from 6th April 2009. (see **Issue Under the Spotlight** for further details).
- Immigration-related workplace investigations and inspections are increasing. A civil penalty applies when an employer has employed an adult not entitled to work in the UK or whose eligibility has lapsed – maximum fine £10,000. A criminal penalty applies when an employer is proved to have actual knowledge that a worker is being employed illegally – unlimited fine or 2 years' imprisonment.
- The Health & Safety (Offences) Act 2008 came into force on 16th January 2009. Definition of Negligence will include failure to carry out proper risk assessments of safety of employees as well as members of the public – maximum fine £2,000, or 12 months' imprisonment if heard in a magistrates' court, or 2 years' if in a crown court.

- Right to request flexible working was extended on 6th April 2009 to parents of any child up to the age of 16 years
- Employers may no longer count public holidays as part of the legal minimum paid holiday entitlement. From 1 October 2008, public holidays must be granted, although not necessarily on the holidays themselves i.e. a minimum of 28 days paid holiday for fulltime employees.
- The European Court of Justice has held an employee may be discriminated against by association with a disabled person. (see the case of Coleman v Attridge Law)
- Information and Consultation of Employees Regulations 2004 apply to all organizations with more than 50 employees from April 2008 i.e. do not apply to organizations with less than 50 employees.
- The Maternity and Parental etc and Paternity and Adoption Leave (Amendment) Regulations 2008 came into force in 2008, providing the right to non-pay benefits to those on additional maternity and adoption leave. The provisions do not apply to pension contributions, which are payable only during any period of paid leave.

b Future Legal Changes

NOTE: there are signs that the current economic situation is slowing down development and/or implementation. The list is largely unchanged from the last Newsletter.

- ◆ The House of Lords will decide, later this year, the arrangements for implementing the recent European Court of Justice ruling that annual leave should continue to accrue during sick leave e.g. whether the increased statutory leave is to be included in calculations, the timing of taking the accrued leave. Expect other changes because any decision is likely to have an impact on payment of Statutory Sick Pay and Working Time Regulations.
- ◆ Agency workers to be entitled to 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). Consultation is under way; deadline for implementation December 2011.
- ◆ 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/52 weeks 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/26 weeks paternity leave, if the mother returns to work before the expiry of leave entitlement (date still not yet confirmed, may be April 2010)
- ◆ 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.
- ◆ A successful private member's bill has passed through the House of Commons, proposing to link rises in the ceiling for Statutory Redundancy Pay to average earnings, rather than to the Retail Prices Index.
- ◆ National Minimum Wage rates from 1st October 2009:
 - Employees aged over 21 years £5.80 p hr
 - Employees aged 18-21 years or 22+ on accredited training £4.83 p hr
 - Employees aged 16 or 17 years £3.57 p hr

Issue Under the Spotlight

Disciplinary and Grievance Procedures

- On 6 April 2009 the statutory dismissal and disciplinary and grievance procedures were repealed and replaced by a new ACAS Code of Practice (3 steps). There are transitional arrangements: the statutory procedures apply to dismissals, disciplinary cases and grievances that are live on 6 April 2009. Full details of the transitional arrangements are available on www.berr.gov.uk. You are advised to review your current procedures to check compliance with the new Code.
- The Code of Practice applies when an employer seeks to dismiss or discipline an employee for one or more reasons, or when an employee wants to raise one or more grievances in the workplace. Failure to follow the Code when applicable will make a dismissal automatically unfair - subject to the employee being able to bring a claim before a tribunal.
- The 3 steps are as follows:
 - Step 1 Establish the facts of the case and inform the employee of the problem (in writing);
 - Step 2 Hold a meeting/hearing at a reasonable time/date with the employee to discuss the problem at which s/he may be accompanied and then decide what action is required and inform the employee of the proposed action (in writing);
 - Step 3 Provide the employee the right and means to appeal the decision (in writing)
- Right to be accompanied by one colleague at disciplinary, grievance or appeal hearings now extends to workers not just employees. A colleague is defined as a work colleague, or a full-time union official (whether or not recognised) or a trade union lay official with written certification of their experience or training in disciplinary or grievance work. If your procedures allow some other companion, you may continue with this but as the

employer you have the right to refuse a spouse, partner or other representative.

The companion may address the hearing, put forward the employee's case, sum up, respond on behalf of the employee to views expressed, and confer with the employee. S/he has no right to answer questions on the employee's behalf, address the hearing if the employee does not wish, nor prevent the employer from presenting its case. The timing of the hearing must be convenient for all parties: the employer, the employee and the companion.

- For employees on fixed term contracts, the recommended process at the end of the term, if not renewing it, is to put in writing:
 - the decision not to renew the fixed-term contract, and
 - offer the employee the opportunity of a hearing at a reasonable time and place to discuss the decision, and
 - confirm the right to appeal. The employer is not required to actually hold the hearing if the employee decides not to take up the offer of an appeal.
- Compensation awarded by an employment tribunal may be raised or lowered by a maximum of 25% for "unreasonable" non-compliance with the Code.
- Full details of the Code of Practice can be found on www.acas.org.uk/dgcode2009

Latest Published Statistics

- ✚ Earnings Threshold for the employer to have to deduct PAYE and NIC: £110.00 per week from April 2009
- ✚ Lower Earnings Limit (LEL) is £95.00 per week from April 2009. This is the minimum level for the employee to qualify for benefits
- ✚ The employer must keep a record of payments even if earnings are at or above LEL but below Earnings Threshold i.e. between £95-110.00 per week (*it is advisable to record all payments regardless of thresholds*)
- ✚ National Minimum Wage from 1st October 2008 (*subject to annual review*):
 - Employees aged over 21 years, £5.73 p hr
 - Employees aged 18-21 years or 22+ on accredited training £4.77 p hr
 - Employees aged 16 or 17 years £3.53 p hr
- ✚ Statutory Parenting (Maternity, Paternity, Adoption) Pay: standard rates are £123.06 per week (or 90% of average earnings if less) from 6 April 2009
- ✚ Retail Price Index (all items) fell 1.2% to April 2009
- ✚ Retail Price Index (excl. mortgage interest) rose 1.7% to April 2009
- ✚ Consumer Prices Index rose 2.3% to April 2009
- ✚ UK Average Earnings Index rose 1.5% to March 2009