

### IN THIS ISSUE

- > TUPE still protects workers in bought out companies. Page 2
- > UNPAID INTERNSHIPS and the law. Page 3
- > ABOLITION OF DEFAULT RETIREMENT AGE: transition to open-ended working life. Page 4/5
- > FIRST CORPORATE MANSLAUGHTER CONVICTION: the implications. Page 6
- > THE BRIBERY ACT and corporate hospitality. Page 7
- > NEW PATERNITY LEAVE PROVISIONS. Page 8
- > EMPLOYMENT LAW CONSULTANCY. Page 8



GREGORY ROWCLIFFE MILNERS  
SOLICITORS  
1 Bedford Row, London WC1R 4BZ

Tel: +44 (0)20 7242 0631  
Fax: +44 (0) 20 7242 6652  
Email: law@grm.co.uk



Jane Laidler  
Joint Managing Partner and  
Head of Employment and  
Immigration Group

“Welcome to our spring update. Through this newsletter we aim to keep you informed about a wide range of topics in the fast moving arena of employment law and immigration policy together with news of developments and events here at GRM.

In this issue we look at the practical implications of several new and forthcoming pieces of legislation. Obviously we can only highlight the key issues here, please do contact me if you would like to discuss how you should go about devising appropriate policies and practices within your own organisation.

I hope you find these topics of interest and would welcome your suggestions for future articles. Do feel free to let me have your feedback by contacting me at:

j.laidler@grm.co.uk or telephone +44 (0) 20 7242 0631

”



## TUPE STILL PROTECTS WORKERS IN BOUGHT OUT COMPANIES

### New Tribunal decision clarifies the position of employees of insolvent businesses

The Transfer of Undertakings (Protection of Employment) Regulations known as TUPE protects workers when their employing organization is being transferred to another business. In recent years, due to unclear wording, there has been debate over whether or not TUPE applied when administrators sold insolvent businesses.

Now a recent employment tribunal decision has ruled that workers are fully protected under TUPE regulations if their employer comes out of administration and is purchased by another company. The decision (in *AE Olds v. Late Editions*) indicates that administration does not equate to insolvency in relation to liquidating the assets of the transferor. However, TUPE will not apply if the aim of going into administration was to liquidate the insolvent company's assets.

The implication of this decision is that anyone considering purchasing an insolvent business will need to take potential TUPE obligations into account. They may also, in some situations, recognize that there may be a risk that they may face claims from employees dismissed prior to the business going into administration.

TUPE was introduced to ensure that in cases of business transfer employees are not dismissed without justifiable reason and their main conditions of employment continue. In practice, however, implementing TUPE can involve dealing with numerous anomalies and exceptions and may be far from straightforward.

Owners of struggling businesses and those seeking to purchase previously insolvent organizations should seek legal advice at an early stage to avoid unforeseen future difficulties, particularly in relation to this new ruling.

[www.grm.co.uk](http://www.grm.co.uk)

## VALUABLE WORK EXPERIENCE OR SLAVE LABOUR?

### Many unpaid internships break the law

In the current economic climate where redundancies are commonplace and few new jobs are being created, unpaid work placements - known as internships - are becoming an increasingly popular way for young people to gain work experience.

From the employer perspective they can be a very effective way of accessing additional labour at little cost, while possibly also assessing interns' potential as future employees. They also may have a philanthropic element in enabling young people to "get a foot in the door" of oversubscribed industries. And the benefits can extend to other employees too; recent research\* found that 84% of employees who had worked in a company that employed interns considered them to be a useful addition to their organisation.

However, in the prevailing atmosphere of fierce competition for jobs, particularly for those in highly desirable sectors such as the media and fashion, there is a danger that interns may be exploited – and not necessarily intentionally.

The research study showed that only 12% of managers realised that companies may be breaking the law if they offer unpaid placements. The fact is that regardless of whether or not they are called an intern, anyone taken on by a business to do work for them with work responsibilities and set hours, cannot be a source of free labour. They must be paid at least the national minimum wage.

That unpaid internships continue may also be due in part to, as the research also showed, the finding that only one in 10 under-35s who have heard of internships knew their rights in relation to working as an unpaid intern. Employers cannot rely on this situation to continue. As young people continue to struggle to find paid employment and the shared pool of intern experiences grows, there may well start to be a backlash. Prudent employers will take advice about the implications of the internships they wish to offer.

\*The State of Internships in the UK published by Internocracy, March 2011



For more information, please contact:  
Jane Laidler + 44 (0)20 7242 0631  
j.laidler@grm.co.uk

## ABOLISHING DEFAULT RETIREMENT AGE

### Transition to open-ended working life

The draft Regulations to abolish the notion of a default retirement age (DRA) (i.e. the process by which employers could compel employees to retire at a certain age) were published in 2010 only to be followed by a second set correcting the drafting errors in the original version. The Regulations came into force on 5th April 2011.

The new draft was produced to provide greater clarity about the details surrounding the transitional arrangements for the introduction of the new legislation. These details may be summarized as follows:.

Provided the employee has attained the age of 65 by 30th September 2011 and notice of intention to retire under the current provisions was given by 5th April 2011, an employee can be lawfully retired.

There is a final cut-off date of 5th January 2012 for an employee to exercise his or her right to a request to continue working beyond retirement. This means that an employee who received on 5th April 2011 twelve months' notice of retirement has until 4th January 2012 to exercise the right to request that he/she may continue working.

The last possible date for retirement of an employee under the current Age Regulations will be 3rd October 2012. This would be the case where an employee who was given notice on 5th April 2011 of intention to retire them on 4th April 2012 could then be given a maximum six months' agreed extension, taking him/her to 5th October 2012.

The new legislation also overturns the previous scenario whereby it is not considered to be age discrimination to refuse to offer a job to someone who will reach "retirement age" within six months. The provision of insurance benefits to the under 65s, but not to those over 65, will not amount to age discrimination.



Now the DRA has gone it is unlawful age discrimination for employers to require an employee to retire at any age, unless this is objectively justified. "Objective justification" involves employers having to provide a legitimate business case as to why they need to retire employees at a certain age, for example for reasons of health and safety in particular occupations where peak physical or mental performance is essential for carrying out the job. Employers should be wary of relying on this proviso however as it is anticipated that it will be challenged extensively in future tribunal cases.

As this new legislation is being introduced relatively swiftly employers will need to review carefully their policies and procedures. If in doubt, we recommend seeking early a advice in order to avoid the possibility of future claims from older employees who feel they have been unfairly treated.

#### REMINDER :

#### Change to minimum wage

On 1 October 2011, the adult national minimum wage will increase to £6.08 per hour from £5.93 per hour, an increase of 2.5%. At the same time the adult rate was extended to workers aged 21, having previously only been paid to those aged 22 and over. The rate for workers aged 18 to 20 will increase to £4.98 per hour, and to £3.68 per hour for those aged 16 and 17.



For more information, please contact:  
Helena Ross + 44 (0)20 7242 0631  
h.ross@grm.co.uk

## CORPORATE MANSLAUGHTER CONVICTION

### New implications for Health and Safety Procedures

The employer of a young geologist who died while excavating a site is the first company to be convicted under the Corporate Manslaughter and Corporate Homicide Act 2007.

The Act, which came into effect in April 2008, was designed to make it easier to bring organisations - both large and small - to justice in the event of a gross breach of a duty of care. Under previous legislation, prosecutions were rare because of the requirement to identify a specific senior individual who could be held accountable.

Under the provisions of the new Act an organisation may incur significant penalties including an unlimited fine if convicted of corporate manslaughter. It may also suffer irreparable damage to its reputation as, where appropriate, the court can force an organisation to publicise their conviction.

In addition, while individuals cannot be convicted under the Act, a successful prosecution will be one which, among other things, shows that the way in which the company's activities were managed or organized caused the person's death and it is the senior managers and directors who will ultimately be held responsible for such management and organisation.

In practical terms, to avoid such a scenario employers would have to show that they conducted an assessment of the particular dangers inherent in a specific situation and that they put in place measures designed to mitigate these risks. It should be noted that it is not sufficient to merely have liability insurance in place and if there is a successful criminal prosecution for corporate manslaughter, insurance cover will not be available to the company for any fine or costs.

Ultimately, however, the Act requires employers to have sound and reasonable health and safety policies and procedures in place and to conduct activities in accordance with them. If this is done and an accident unfortunately does occur, it should be difficult to hold the organization responsible under the Act.



## THE BRIBERY ACT 2010:

When does a gift or hospitality become a bribe?

The Bribery Act 2010 which will be introduced into UK law on 1st July 2011 has been devised with the aim of reducing corruption and increasing transparency in business practices throughout the UK.

The Bribery Act creates four offences: two general offences – “active” and “passive” bribery - relating to the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage; a further specific offence of bribing a foreign public official; and a wide-reaching “corporate offence” which would occur when a person associated with a business bribes another person for the benefit of that organisation.

In the latter situation there would be no need to show that there had been negligence or even involvement on the part of the organisation. The penalty for individuals who commit such offences may be a fine or a jail sentence for a period of up to ten years. Organisations found to have committed a corporate offence may be subject to unlimited fines.

The only defence available for businesses will be to demonstrate that they have devised “adequate procedures” to defend against bribery.

A particularly complex aspect of the new legislation is that certain types of corporate hospitality and gifts may be regarded as illegal bribes and thus constitute a corporate offence. The guidance available so far indicates that reasonable hospitality which forms a normal part of business dealings would not be an issue. However, more lavish hospitality directed at specific individuals in a way that could be interpreted as intending to influence them could present a problem.

The government has introduced guidance about procedures that commercial organisations can put in place to prevent bribery. Businesses are advised to start examining their potential risk in respect of practices that could be considered bribery prior to devising internal policies and practices that will amount to “adequate procedures”. Training will also be needed at an appropriate stage to make sure all employees understand the scope and implications of this new legislation.



For more information, please contact:  
 Jane Laidler + 44 (0)20 7242 0631  
 j.laidler@grm.co.uk

## NEW PATERNITY LEAVE PROVISIONS

Changes to the rules governing Paternity Leave came into force on 6 April 2011. Under the old rules any employee eligible for paternity leave could only take up to two weeks statutory paternity leave. Now they will be entitled to additional paternity leave (APL) of up to 26 weeks. However APL can only commence once the child's mother has returned to work from maternity leave - the new rules don't allow both parents to take time off together. The earliest date for APL to begin is when the child is 20 weeks old and it must be completed by the time the child is a year old.

If APL is taken outside the maternity pay period, it will be unpaid. It will attract statutory paternity pay if it is taken during what would have been the mother's statutory maternity pay period (the first 39 weeks of maternity leave). In this case the amount of pay will be the same rate as standard weekly statutory maternity/ paternity pay.

## EMPLOYMENT LAW CONSULTANCY

New or updated employment law generally means training your staff in new workplace policies and procedures in order to generate understanding, compliance and behavioural change.

Our employment law partners and solicitors are happy to provide such training, in-house at your premises and - unlike other public courses – tailor made for your staff and your particular requirements. We can accommodate your needs in terms of staff levels, delegate numbers and timing and duration of training sessions and can even source specialists in other related fields of expertise (e.g. performance management) should this be required.

From time to time, you may also need refresher sessions in a number of key areas in order to retain staff focus and commitment. Areas we cover include:

- Recruitment practices
- Diversity and equal opportunities
- Managing sickness absence
- Flexible working and other family friendly policies
- Discipline and grievance handling
- Managing redundancy and reorganisation
- TUPE ... and many more

As our training is based on many years experience in dealing with the practical outcomes of HR and employment law issues in the workplace, we offer the benefit of practical advice relating to real life workplace scenarios.