






On the face of it...



January 2010 NEWSLETTER

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NEW YEAR – NEW EMPLOYMENT LAW

The precedent set in 2009 for high numbers of employment related claims has forced Companies to reassess their risk exposure for the coming year. In 2010 brokers will feel the impact of increased client caution and the demand for protection from the financial exposure of Employment Practices Liability Claims.

In particular, the priority for Companies this year is to arm themselves against the increased public awareness of discrimination claims.

There has been a noticeable rise in the number of Employment Practices Liability Claims notified to Insurers. This is a direct reflection of the European Commission Opinion Survey on Discrimination released on the 9th November 2009 which found that *“awareness has increased since the last survey in 2008 in the UK (+8 points)”*. This awareness is confirmed in the fact the ACAS and the Equality Direct Helpline have seen a consistently high combined total of 732,300 calls in 2008/209 and an increase in claims accepted by the Employment Tribunal from 115,039 in 2005/06 to 151,028 in 2008/09.

To make matters worse this could be set to increase if the rights of employees are expanded following criticism on a European level with the European Commission threatening to take legal action against the United Kingdom for failure to meet equality obligations necessitated by European law inasmuch as:

- ⊗ *It does not have a wide enough definition of indirect discrimination as it does not cover potential discrimination.*
- ⊗ *The exceptions to the principle of non-discrimination on the basis of gender for certain jobs are too wide.*
- ⊗ *The right of discrimination by association, to support victims of discrimination before the courts is not established with sufficient clarity (e.g. discriminating against an employee with a disabled relative).*
- ⊗ *Exceptions for religious employers to the principle of non-discrimination based on sexual orientation are broader than allowed by European Directives.*
- ⊗ *It does not ban “instructions to discriminate” i.e. when an employer instructs an employee to carry out a discriminatory act.*
- ⊗ *There are no clear requirements for class actions.*

As the UK finds itself under pressure to amend and widen equality law the ramifications on employers and indeed the Insurance market over the coming months could be very serious.

The Equality Bill (which has successfully passed through the House of Commons) may allow Parliament to address these criticisms as it aims to make discrimination law accessible and understandable with the creation of one Act for all types of discrimination.

The Bill was first put before Parliament in April and is continuing in this Parliamentary Session. With the Committee stage scheduled for the 13th January 2010 it is expected that this Bill will become law in this Parliamentary Session with the majority of the Bill becoming effective in autumn 2010.

The Equality Bill includes:

- 8 *Powers to extend age discrimination protection outside the workplace to make it unlawful to discriminate against someone who is providing a service, providing goods or carrying out public functions.*
- 8 *Clarification of protection against discrimination by association, for example in relation to a mother who cares for her disabled child.*
- 8 *Extends discrimination protection in the terms of membership and benefits for private clubs and associations.*
- 8 *Provides for legislation requiring that employers review gender pay differences within their organisations and publish the results.*
- 8 *Provides for changes to the way that individual claims are enforced, and gives employment tribunals' wider powers to make recommendations for the collective benefit of employees.*
- 8 *Allows a Minister to amend UK equality legislation to comply with European law without the need for primary legislation.*

Therefore, not only will there be increased protection for employees but if the power to change equality law without recourse to primary legislation is implemented then this would mean that more changes to discrimination law could be forthcoming. If, as expected, this law is enacted, the greatest impact will most probably be on small and medium sized businesses that are less likely to have extensive anti-discrimination policies in place.

The Parliamentary website anticipates that "the Bill will harmonise and in some cases extend existing discrimination law covering the 'protected characteristics' of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. It will address the impact of recent case law which is generally seen as having weakened discrimination protection, and harmonise provisions defining indirect discrimination".

The growing awareness of discrimination coupled with the potential for clearer legislation in this area is likely to further increase the number of Employment Practices Claims over the next year. To avoid the potential adverse effects of implementation of this Bill employers will need to take preventative as well as defensive measures to ensure they are protected from the expected and expansive discrimination law the Bill will create.

Companies can protect themselves from an Employment Practices Liability Claim if they buy a Directors and Officers Liability Insurance Policy with the benefit of an Employment Practices Liability Extension.

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DATA PROTECTION, THE CONSEQUENCES

Small business owners in the UK could bear the impact of proposed new EU-wide data protection legislation, which is currently being considered by The European Commission. Should the proposed legislation become law, businesses that lose data would be forced to go public with their loss through new 'data breach notifications' – including informing every person whose data had been lost, of that loss. Whether this proposed legislation makes it to the statute books or not, the increasing reliance on data and in particular the increasing use of mobile technology such as USB sticks and laptops means that more than ever before, small businesses are in danger of falling foul of the Data Protection Act, exposing business owners to the risk of litigation.

Despite recent high profile cases of large organisations not protecting their data properly – such as the T-Mobile case where millions of customer records were stolen by company employees and sold on to the company's competitors - it is small businesses in the UK, the vast majority of which do not have specific data protection policies in place, that face the highest risk of breaching their data protection responsibilities and by doing so increasing their exposure to litigation.

The growing use and dependence of technology by businesses across the UK particularly in the last 10 years has seen the vast majority of SMEs holding data on customers, employees, suppliers, clients or members of the public both electronically, and increasingly via the web as a result of the meteoric rise in the use of the internet and e-commerce.

According to a survey of over 500 small and medium businesses conducted by British Standards organisation BSI, almost one in five businesses has unwittingly breached the Data Protection Act (DPA) at least once. Of these, nearly half said they had breached the Act on several occasions and an additional 18% said they were not sure whether they had or not.

The survey provides a snapshot of how UK businesses manage the personal information they hold on staff and customers, including sensitive data such as racial or ethnic origin, trade union membership and criminal proceedings. It was carried out to mark the publication of a new British Standard on data protection which will help organisations put in place a framework for maintaining and improving compliance with data protection legislation and good practice. The survey also found that:

- ⊗ 65% of businesses provide no data protection training for their staff.
- ⊗ Nearly half of those surveyed admit that there is no one in their business with specific responsibility for data protection.
- ⊗ 15% of businesses are not confident that their data sharing practices conform to the DPA and worryingly, almost 5% of these frequently share data regardless.
- ⊗ 18% of businesses said that data protection is less of a priority in the current economic climate.

In addition, a study by network software developer Napera has also revealed that despite the growth in data security breaches, many companies still do not have in place the policies, practices and solutions needed to protect their networks, with SMEs leaving themselves open to attack, which could see their networks or data compromised and in breach of the Data Protection Act.

But it's not just the loss of data that small business owners need worry about. A recent survey undertaken by information security company Cyber-Ark has revealed that 60% of office workers would take their firm's data with them if they were made redundant or sacked for any reason, this is a six fold increase from the previous years study. Additionally four times more employees said they would take chief executive's passwords and development plans. The Cyber-Ark survey also revealed that three quarters of those questioned claimed they could bypass the controls their companies had put in place to protect such information. In addition, employees' misuse of memory sticks could expose businesses to other liabilities: for example infringement of copyright if the devices are being used to make unauthorised copies of software, music or other copyright works.

Any business would therefore be foolish not to take some basic protective measures – some of which are legal and some of which are technical. In truth, the technical measures are best as they stop issues arising in the first place. Some practical solutions would be to use software security solutions that disable USB ports so people are stopped from downloading data onto USB sticks without authority.

Under the existing Data Protection Act 1998, any small business that holds information has responsibilities and must ensure the data held is:

- ⊗ Fairly and lawfully processed
- ⊗ Processed for specific purposes
- ⊗ Adequate, relevant and not excessive
- ⊗ Accurate and kept up to date
- ⊗ Not kept for longer than is necessary
- ⊗ Processed in line with the rights of the individual
- ⊗ Kept secure
- ⊗ Not transferred to countries outside the European Economic Area unless there is adequate protection for the information

With the use of electronic data on the increase the proposed EU-wide data protection could hit small firms hardest. Storing data is a fact of life today for almost every business of every size, and as a result data loss and data theft is on the increase, with the burden of protecting that data from both internal and external sources, highly likely to be left on the shoulders of the business owner in the case of small businesses.

Even under the existing Data Protection Act it is still a company's duty, via the company's appointed data protection controller, to protect the data under Principle 3 of the Data Protection Act 1998.

Historically, actions in breach of the Data Protection Act have been reserved for the larger,

more high profile data losses, but the fact is that companies of all sizes are responsible for properly protecting data.

However, under the proposed EU Legislation, companies that fail to properly protect their data would be duty bound to inform those people whose information they had lost, or had stolen of what had occurred, increasing the risk of litigation from these people or organisations.

Apart from the business risk of losing confidential data, there are other risks associated with data loss including breach of confidentiality or breach of contract if the data is actually a client's or supplier's confidential information and could lead to law suits, investigations and fines especially if the business has not taken appropriate security measures to protect it.

Sally-Anne Poole, Head of Enforcement & Investigations at the ICO – the Information Commissioner's Office - the body that investigates alleged breaches of the Data Protection Act said "Since November 2007, 161 data security breaches have been reported to the ICO in the private sector. We urge all CEOs and their senior management teams to ensure data protection is treated as a corporate governance issue affecting the whole organisation. All organisations need to make sure that safeguarding the personal information of customers and staff is embedded in their organisational culture."

SMEs fail to protect networks

All businesses should have policies in place to identify and control who and what are accessing the network. The majority of small to medium enterprises are failing to protect their corporate networks. Any guest users or remote workers should be checked to ensure their devices are patched and up-to-date, and all individuals should have their own password.

The Information Commissioner can take out enforcement action to ensure a companies information processing is in line with these principles so it is essential that internal procedures accommodate these data handling requirements, and that all employees are also aware of the Data Protection Act requirements.

Mike Low, Director, Standards, BSI, said: "The five million small and medium sized businesses in the UK form the backbone of the British economy. These organisations are handling vast amounts of personal information on a daily basis and while it is encouraging that some already have appropriate data protection measures in place this survey shows that there is still a long way to go.

"A third of businesses we surveyed stated that the complexity of the legislation restricts their compliance with the Data Protection Act. BS 10012 is a new standard, published by BSI, which addresses this and many other issues, providing organisations with a framework for maintaining and improving compliance."

Gordon Wanless, Chairman of the Data Protection Forum, said: "The BSI survey backs up what we have known for some time – that many organisations find the legislation in this area complex. The standard can help organisations put in place the measures which will lead to compliance and demonstrate that they are handling personal information responsibly. BS 10012, launched by BSI, is the first standard of its kind in the area of Data Protection and is expected to be used widely by both public and private sector organisations."

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DIRECTORS IN THE DOCK

Company Directors Fined

The directors of an engineering company where a man died in an explosion have been fined £10,000 each for Health and Safety breaches. In addition to the fine imposed upon both Directors, the company itself was ordered to pay more than £67,000 in costs.

In April 2006, Tony Reed, from Tiverton, suffered massive head injuries and died after the oil drum he was welding exploded. A spark had ignited flammable substances in the drum.

A Health and Safety Executive investigation found the company, which makes crop-spraying equipment, had failed to introduce a system for storing flammable substances and had also failed to train staff on the risk of working with such materials.

Jason and Richard Bateman of RJ Bateman (Engineering) Ltd, of Chulmleigh in Devon, were both prosecuted. At the hearing at Exeter Crown Court, Judge Wassall, said it was a caring, successful family firm, however, it had committed extremely serious breaches of health and safety rules, by not realising the vital need for them, rather than deliberate criminal negligence or financial greed.

The company and its directors had pleaded guilty at an earlier hearing to five charges brought by the Health and Safety Executive. There had been two previous injuries at the firm before Mr Reed's death.

Pub Landlord Fined After Woman Slipped On Ramp

A PUB landlord has been prosecuted under health and safety legislation after a woman slipped on a ramp and fractured her knee. Richard Jenkins appeared at Barnstaple Magistrates' Court to face one charge of failing to ensure the safety of the public at the Hunters Inn, Newton Tracey.

North Devon Council solicitor Trevor Blatchford told the court that on Saturday, September 12 a customer visited the pub with three friends; enjoyed a meal and left at 9.40pm. As the customer, who had only drunk Diet Pepsi that evening, walked outside, she slipped on a disabled access ramp which was installed to provide public access to and from the pub. She fell to the floor, hurting both of her legs, Mr Blatchford said. A few moments later, bar manager Julie Squires came out to help. In her statement, which was referred to in court, Mrs Squires said a handrail, which had been next to the slope had "been missing for weeks".

The court heard that Mrs Batt was struggling to walk when she got home and was taken to hospital. An X-Ray revealed she had fractured her kneecap. As a result, she had to wear a leg brace for two weeks and have physiotherapy.

The incident was reported to North Devon Council the following Monday and the next day an environmental health officer went to the pub and took photographs of the ramp, which had no handrail. Jenkins had put tables and beer crates at the side of the ramp as a sort of informal barrier. The officer visited again the following Friday and found that Jenkins had installed a handrail. The defendant later said the previous handrail had been badly damaged by someone who was drunk, the court heard. When asked for his side of the story, Jenkins, who is a joint-owner of the pub, told the court: "Unfortunately I had my eye off the ball for a few weeks. I should have made sure the slope was covered by a barrier and I didn't."

Passing sentence, the presiding magistrate said the offence was serious because the premises were open to the public. The maximum fine for such an offence is £20,000 and a six months prison sentence. The court said the matter of any compensation should be left to a civil court. Jenkins was handed a £2,000 fine and ordered to pay £718 costs and a £15 victim surcharge. He offered to pay in full immediately.

Under the Health and Safety at Work Act 1974, and subsequent regulations, every employer has a duty to ensure the health and safety of members of the public using their premises, as far as is reasonable and practical. Putting a handrail next to a slope is seen as one key way of minimising risk.

Bristol news reader Lisa Aziz launches £5million claim against ITV

Bristol television presenter Lisa Aziz could receive as much as £5 million if she wins the racism case she is bringing against her bosses. The West Country Tonight co-presenter is taking ITV to an employment tribunal over claims of race and age discrimination. In papers prepared for her case, Ms Aziz has claimed a colleague regularly mimicked former News At Ten anchor Sir Trevor McDonald. The documents are also reported to include claims that the colleague imitated Pakistani and Irish accents and the accent of Bristol-based weather presenter Alex Beresford.

Ms Aziz has been off work since June, signed off sick with stress and depression, which she claims is a direct result of accusations her bosses made about her expenses. Talking to her local newspaper, Ms Aziz said: "In my view, this is about race discrimination, sex discrimination and ageism. When they asked me to work on a piece about terrorism, they told me to use my 'terror contacts', as if I was part of a West al-Qaeda cell. I was upset by that and told them why, but it was never dealt with."

Ms Aziz is reported to have claimed within legal papers drawn up for her employment tribunal that she was "set up" by senior ITV managers to remove her from her £160,000-a-year job. The tribunal, due to be heard next March, will examine claims of race, sex and age discrimination.

Ms Aziz said the accusations of misuse of expenses have been blown out of proportion, according to reports in a national newspaper.

It has been alleged that ITV launched an internal investigation into the claims of racism at its Bath Road studios. The colleague accused was cleared of racism following the investigation but has reportedly stopped doing his impressions.

An ITV spokesman said: "ITV does not ordinarily comment when employee investigations or disciplinary proceedings are active. However, on this occasion, given the allegations which have been levelled at the company and a number of employees, we feel that we are left with little choice but to vehemently deny any discriminatory behaviour." He continued: "ITV follows established and recognised employment procedures and, as a result, we have carried out a full and thorough investigation, which found the claims made by Lisa Aziz to be baseless. We will vigorously defend our position in this regard," he said.

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SCHOOL GOVERNORS WARNING

The following case highlights the levels of responsibility placed upon School governors, the exposures they face in what is after all a voluntary role and shows what can happen when something goes wrong. Whilst not directly involved in the incident itself, the school governors were found to be responsible for ensuring the health and safety of pupils and teachers alike.

Following an incident at the Giles School of Church End, Old Leake, Boston, Lincolnshire, the Health and Safety Executive (HSE) is warning school governing bodies to ensure that correct risk assessments are undertaken and precautionary advice is issued when pupils are using hazardous substances. The advice comes after a 6th form student was left with only two fingers after using plaster of Paris to make a cast of her own hands in an A-Level Art and Design class.

The Governing Body of the school was fined £16,500 and ordered to pay £2,500 costs at Boston Magistrates' Court, after pleading guilty to breaching both section 3 (1) of the Health and Safety at Work Act 1974 and regulation 3 (1) (c) of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.

On January 31, 2007 during a regular A-Level Art and Design Class, a 16-year-old girl decided to make a cast of her own hands using plaster of Paris. Having noted that a pupil had done something similar a few weeks beforehand, she sought advice from her teacher as to how to do this. Unaware of the chemical reaction causing extreme heat, which occurs when plaster of Paris is mixed with water, the student placed her hands directly in the substance in order to make the cast. It fast began to set and she realised her hands were stuck. Fellow pupils and the classroom teacher tried to help but to no avail and an ambulance was called.

Paramedics arrived and they also tried to remove the cast but found it was not possible to prevent the plaster of Paris from setting further. They took her to Boston Hospital, Lincolnshire, and she was later transferred to the Burns Unit at Nottingham City Hospital.

In the meantime the chemical reaction between the substance and the girl's hands meant that her fingers were so severely burned that they required amputation. She spent a length of time in hospital and made subsequent repeated follow up visits. Due to the extensive nature of the injuries she suffered the amputation of the thumb, and all her fingers on her left hand and the thumb, little and ring fingers to the right hand. In total she is left with just two fingers on her right hand.

A risk assessment, required by law, for the handling of hazardous substances had not been carried out, the class pupils had not been told by their teacher of the potential

dangers of plaster of Paris and the pupils had not been instructed to wear gloves or other protective equipment when handling the substance. In addition, the school's Governing body did not report the incident. The school's Governing body was deemed responsible and not the local authority because the school has foundation status and is therefore not governed by the local authority.

HSE inspector Jo Anderson said "Risk assessments in educational establishments must not be viewed as burdensome, but instead, paramount to pupil safety. "Governing bodies of foundation schools must realise the importance of the implementation of health and safety measures to prevent further incidents which can have such a drastic effect on student's lives."

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On the face of it...

WIN £500

IN TRAVEL VOUCHERS

I JUST USE ONE BAG COMPETITION

If you are going on a winter holiday this year don't forget to take your Angel Jute bag with you and take a picture of you with it so you can enter our "I use Just One Bag" competition and have the chance to win £500 worth of travel vouchers.

To enter the competition, all you have to do is take an Angel eco friendly jute shopping bag somewhere "special," take a photograph there including both you and the bag, and send the picture to us.

The picture needn't be somewhere exotic or far away it just needs to be something "special", so it could be you and the bag posing with a famous person, or on top of a mountain, in a submarine, at a concert, or on the London Eye. The most "special" in the opinion of our judge will be the lucky winner!

Launched at the Angel Underwriting Broker Forum in Exeter, the new jute bag has been designed with this competition in mind. They will be available during the year starting in Bristol at the Westinsure annual conference in January and again at the Excel centre in London for the 2010 BIBA conference on 19th and 20th May. We will also have them at the Angel broker forums that we will be hosting around the country during 2010.



If you are not able to make it to any of these events then Gary Green, Angel's Business Development Director will be happy to arrange a visit and deliver one to you in person.

To give you an example of what we are looking for, there are some examples on our web site, to see them, visit our website competition pages at

www.angelunderwriting.com/uk/Media/JuteBagCompetition/JuteBagCompetitionGallery.aspx

"It was the fact that one of our brokers told us they took their Angel Jute Bag everywhere – even on holiday – that was the inspiration for the competition," said Angel Business Development Director Gary Green.

The competition is open to agents registered with Angel Underwriting and is free to enter. There is no limit to the number of pictures you can submit. Entering is easy, all you have to do is go to

<http://www.angelunderwriting.com/uk/Media/JuteBagCompetition.aspx> from where you can upload your pictures, there is no limit to the number of entries per person.

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All pictures will be judged by Mark Shreeve, CEO of Angel Underwriting, whose decision will be final. All entries must reach Angel Underwriting by 30th September 2010 and must include the entrants name and contact details. The winner will be notified shortly afterwards and announced in the October 2010 Angel Newsletter.

If you are not already registered as an Angel agent you can call 01206 215500, email gg@angelunderwriting.com, or go to www.angelunderwriting.com and register on line to be able to take part in the competition.

Entries can be emailed to Angel at gg@angelunderwriting.com.

Good luck!

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