



Law & Order UK...

Laying down the law

The new disciplinary code that replaces part of the Employment Bill that relates to statutory grievance and discipline procedure will soon be published by ACAS and is set to come into force from April 6th. Whilst the new code seems to make procedure easier to follow when issues arise in the workplace, it will exist concurrently with the previous code and this makes for a challenging cross-over period. Our simplified article should help to clarify some of the differences.

Other new laws that take effect from April 1 2009 extend the rights to flexible working to parents or legal guardians of children up to the age of 16 years old.

Previously, only parents to children aged six and below, or carers of disabled children and adults, had the right to request flexible working arrangements. The estimated number of people who may exercise this right could rise to as many as 4.5 million parent workers when this legislation takes effect. Given that we are now firmly in recession times, some managers may be forgiven for thinking that flexible working may hamper their organisation's productivity and profitability. In this newsletter, we'll examine the challenges that flexible working creates for SMEs and identify the benefits to managers that

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may make the journey through difficult times easier to bear.

The tricky period of a recession can put any unflappable and experienced manager under immense pressure, and oftentimes knowing what to do that's right for the company, the individual, and that follows the law, can be clouded by other associated matters such as emotions and personal sentiments. **Pinnacle Development Solutions** are here to give you as much help as you need to keep your mind on your business success and help you through any issues that arise relating to the people you employ. Don't wait for things to get worse - just give us a shout! You can reach us on 0800 907 1015 or email contact@pds-hr.com.

Not met us yet?

Not met us as yet? Why not take the opportunity to meet us at our seminar in Ipswich, on Friday April 24th, where we'll be discussing some of today's HR and business challenges along with other local businesses. It will also give you a valuable opportunity to network with other business owners and learn something that may help your business. So put the date in your diary, and we'll have further details in next month's newsletter.



Special Offer!

Don't forget our ongoing offer for training- book two places on any of Pinnacle's development courses and pay only half the price for the second! Just visit our website at www.pds-hr.com for more details, call us now on 0800 907 1015 or email contact@pds-hr.com.



The ACAS Code on Discipline and Grievance

A The final version of the ACAS Code of Practice on Discipline and Grievance will come into force in April 2009. It sets out some guidelines for employers dealing with discipline and grievance, such as the need to deal with issues promptly and consistently, and provides definitions of disciplinary and grievance situations. It also removes a number of grey areas as to what is expected of employers.

From April, rather than being penalised for a failure to follow the statutory procedures, employers and employees stand to be penalised by an adjustment of up to 25 % on any award of compensation for an unreasonable failure to comply with a provision of the code.

The new regime will apply to any case where the trigger event takes place on or after 6 April 2009. So, if an employer writes a letter on 6 April 2009 inviting an employee to attend a disciplinary hearing at which she is subsequently dismissed, the new regime will apply.

What's changed from the previous ACAS code?

1. The code will not apply to redundancies or

written warning and dismissal, a far simpler process for employers to follow. Where an employee "persistently" refuses to attend a disciplinary interview without good cause the code advises that the employer should make a decision on the evidence available.

Grievances

The key stages for handling grievances in the workplace are advised as:

- let the employer know the nature of the grievance
- hold a meeting
- allow the employee to be accompanied
- decide on appropriate action
- allow the employee to take the grievance further if not resolved.

Overlapping grievance and discipline

A new section has been provided in the code which states that a disciplinary process may be temporarily suspended to allow a grievance to be heard or, if the grievance and discipline are related, the issues may be dealt with

the termination of fixed term contracts. However, this does not diminish the need and requirement to consult with employees, and ensure fair and consistent treatment.

2. Employers and employees must 'seek' to resolve issues in the workplace as opposed to "do all that they can" as stated in the previous code.
3. Appropriate procedure should follow the guidance provided by ACAS. Although the ACAS code is not legally binding, or a legal duty to follow, Employment Tribunals will refer to the ACAS code and assess if your procedures follow the guidance and/or if you have followed their guidance, and any failure to do so will potentially result in an award being made against you.

Discipline

The section on discipline sets out the key stages of handling disciplinary problems in the workplace under the headings:

- establish the facts
- inform the employee of the problem
- hold a meeting
- allow the employee to be accompanied
- decide on appropriate action
- right of appeal.

There is now no requirement for an oral warning, although, there is nothing to prevent you from retaining this level within your procedure, as a first stage of advice in the disciplinary process. The recommended process in the code is now written warning, final

Flexible Working Explained

Last year, over 90% of flexible working requests were accepted. With the economy officially in recession, does this expanded right represent a threat or an opportunity to business?

What is an employee's statutory right?

A point worth noting, there is only a right to *request* flexible working. There is no implication that this request will necessarily lead to an actual change in working arrangements. An employer has a duty to give serious consideration

concurrently.

Collective grievances

An additional new section states that the code does not apply to grievances raised on behalf of two or more employees by a trade union or other appropriate workplace representative. This prevents the risk of a 25 per cent adjustment where such grievances are not handled individually.

What does this mean for current disciplinary and grievance cases?

Employers cannot just ignore the statutory disciplinary and grievance procedures from 6 April as they have not simply been removed. There are complicated transitional rules with which all employers need to be aware of to avoid being caught out which mean that in certain circumstances, the old rules continue to apply. There are different transitional arrangements for disciplinary and dismissal issues and for grievances and an employer needs to fully comply with the right set of rules. If you are not sure what these are, you should seek guidance as this could result in tribunal.

The introduction of the new code would seem at face value to be a necessary development, but it has resulted in a minefield of different rules and regulations depending on what cases the organisational is dealing with. For an informed and careful approach to keeping you out of tribunal, speak to the experts at Pinnacle Development Solutions on 0800 907 1015 or email contact@pds-hr.com.



to a flexible working request and be certain that a refusal of such a request can be backed up by the law.

A parent or carer is bestowed this right to request flexible working because of their circumstances in that they have the responsibility of caring for others. As an employee considering such action the law requires them to be specific as to the form of flexibility being sought, and to have also considered any impact that such a change would have on their organisation. Hence the employee has the responsibility of considering all aspects of their request, not least because it is likely to lead to a permanent change in their employment contract.

Flexibility usually involves variations in working hours and location. Technological advances have enabled more sophisticated options and schemes for flexible working, but the feasibility of a new arrangement is wholly dependent on the operational requirements of a business and the resources they have available.

It does not necessarily mean working from home as a large proportion of applicants would like, but could be a potential option, should it benefit both the individual and the company, and can prove very productive for both, where it has been implemented.

The process for requesting flexible working

An employee should first make their request to be considered for flexible working in writing, stating their statutory right, and include details of their caring responsibilities. There is a 12-month moratorium on repeat submissions so if the employee has applied previously they must wait a year before reapplying.

You, the employer, have 28 days from receipt of the written request to arrange a meeting to discuss it (unless you agree to the request immediately). You cannot just turn down the request even if you think it is unreasonable or puts a huge strain on the business operations. The purpose of this meeting is to commence a discussion - even if the requested working pattern is unlikely to be met, other possible alternatives may emerge.

You should then notify the employee of your decision within 14 days of the meeting. If the request, either in its original or amended form, is accepted, you should confirm the details and the

before the contract is amended permanently. If the request is rejected, the reasons for this decision must be explained. Legal grounds for rejection include the impact to the business in terms of costs, quality, performance and staffing, and the ability to service customer demand. You will probably consider how setting a precedent for one employee might result in a wave of similar requests from other people so be clear about what your reasons are.

Your employee can appeal this decision, firstly through an internal process or with workplace mediation if no agreement can be reached. The case can go to employment tribunal if it is alleged that either the decision to reject the request was based on incorrect facts, or that the procedure wasn't followed correctly.

How might my business benefit?

Although flexible working was brought in to allow parents and carers to balance their careers with their caring responsibilities, the value to organisations of operating a range of working patterns has been widely recognised:

- enhanced productivity
- employee commitment
- extended operating hours to customers
- Savings generated by reduced employee absenteeism
- Increased staff motivation and morale
- Employee loyalty and a reduction in costly staff turnover
- Improved job satisfaction
- A competitive edge in attracting new customers and better employees

In this period of uncertainty, having a positive attitude to flexible working might help you avoid cutting costs in less favourable ways, such as through redundancy. Furthermore, as we head back towards a healthier economy, flexible working is an attractive benefit to many and will give your business a considerable advantage in a tight labour market.

If you have recently received a written request for consideration for flexible working, and you are unsure how to proceed, please call the experts at Pinnacle Development Solutions on 0800 907 1015 or email contact@pds-hr.com. Turning a request down without following the correct legal procedure or giving an unjustifiable reason for refusal could lead you

start date of the new working pattern as a contractual amendment. It is often a good idea to have a trial period of the new arrangement

into employment tribunal. Every request for flexible working must be considered on its own merit and in relation to the size of the employer.

Your Questions Answered

'I understand that from the 1 st April, I will now have to give my employees 28 days holiday per year, or 5.6 weeks, which has to include the public and bank holidays. Surely, this does not apply to my part-time employees, who in reality rarely ever work a bank holiday?'

The final part of the annual holiday entitlement increase will be introduced on April 1 st 2009, as contained in the Work and Families Act 2006.

From the 1 st October 2007, you should have been providing ALL your employees with 24 days holiday per year, or 4.8 weeks. So this forthcoming change just represents 4 day increase to the overall entitlement.

The Statutory holiday entitlement will now be capped at 28 including public and bank holidays, and you WILL NOT be required to provide more holiday than this to your employees.

However, you may decide to do so as part of your overall benefits package and remuneration, and it may benefit your recruitment and retention strategy to provide more. But the choice is entirely yours.

It is important to check the wording of your contracts of employment in this regard. If they are worded incorrectly, from the 1 st April you may have inadvertently allowed your employees 28 days holiday, plus the entitlement to the 8 days public and bank holidays, giving them a new entitlement of 36 days, which would certainly prove an expensive mistake if not intended.

With regard to part-timers, under the Part Time Workers Regulations 2002, part-time employees are entitled to receive exactly the same benefits as their full time colleagues, albeit on a pro-rata basis in relation to the hours worked. If this is not the case, then they have the right to claim that they have suffered a detriment, and have a potential cause of action through an Employment Tribunal.



have a little time to ensure you are following the correct procedure or implement the appropriate policy. Pinnacle's top tips for handling this change are:

1. Check the wording of your contracts of employment. Ensure your employees are only *entitled* to 28 days holiday maximum, including the public and bank holidays, unless of course you have chosen to adopt a deliberate policy of providing more than the statutory maximum.
2. Ensure your contract of employment clearly state that part-time employees are entitled to public and bank holidays as part of their holiday entitlement, and on a pro-rated basis in relation to the hours worked.
3. Ensure that you are actually allowing (or have made provisions to allow) the new entitlement, and have an annual leave policy that clearly states how holiday is calculated, and how and when employees can request and take their entitlement.
4. Make sure you have communicated any change in holiday entitlement to all employees, and any resulting change in their contract of employment.
5. Amend your contracts of employment for new employees to reflect the right terms and conditions of employment, and detail the correct holiday entitlement from the outset of their employment.

Therefore, in answer to your question: Yes, part-time employees are entitled to 28 days holiday per year, pro-rata, whether they work a public or bank holiday or not. The additional public / bank holiday entitlement becomes part of their normal annual holiday entitlement. So, should a public or bank holiday fall on a day they are scheduled to work, they can then take that day as holiday, and of course receive holiday pay for it. Alternatively, they can use them as part of their normal allowance and take them at any other point during the holiday entitlement year, as long as they follow the appropriate request and notice provisions. Whilst dealing with part-time employees, it is very important to note that they are also entitled to accrue additional holiday entitlement for any additional hours they work over and above their contracted hours. Again, failure to account for and allow this will give your part-time staff a justified cause of action at an Employment Tribunal.

The next, and first public / bank holiday of the year is Good Friday on the 10 th April, followed by Easter Monday on the 13 th April. So you

Lastly, ensure that ALL part-time employees are accruing holiday for any additional hours worked over and above their contracted hours, up to a maximum of 28 days, and you an appropriate system in place to administer it.

Planning for the various public and bank holidays in advance can be problematic for a few years ahead, so Pinnacle has found a helpful website that will help you see ahead - just [click here](#).

The right to the revised entitlement of statutory holiday becomes law on April 1 st 2009 and will be well publicised. Employment tribunal could be inevitable if you refuse to implement these changes. For guidance and assistance in following the law please contact us at Pinnacle Development Solutions on 0800 907 1015 or email contact@pds-hr.com.

Further assistance

If you would like further information on any issues raised by this bulletin, or require advice or assistance with any other human resources matters, please call us today on 0800 907 1015 or [send us an email](#).

And if you'd like complete protection against anything the growing volumes of employment law can find to throw at you, don't forget our [HR Toolkit](#) - the must-have business accessory for 2009!



The information in this newsletter is of a general nature and is not intended to replace professional advice. We recommend you to ask for specific professional advice before taking any action.

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