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Newsletter

December 2008

I would like to wish you all a very Merry Christmas and a prosperous New Year.



In this issue we cover:

- o Recent Employment Tribunal (ET) Outcomes
- o Management of your Employees at Christmas Time
- o Snow joke
- o Review of 2008
- o What's due in 2009
- o Question and Answer

Please note that from January 2009 the Complete People Management free newsletter will be produced on a 6-monthly basis. If you wish to continue to receive our monthly newsletter contact us at info@completepeoplemanagement.co.uk or on 0208 8168 726 or visit here to find out more:

http://www.completepeoplemanagement.co.uk/15/records/279/14%20Brochure%20HR%20E-NEWSLETTERS.pdf?form_23.replyids=7&form_15.userid=4&form_15.replyids=279&form_23.userid=2&form_23.replyids=7

Clients who have a retained employment advice service will continue to receive the monthly newsletter.

At **Complete People Management Ltd** we want you to receive a newsletter that is informative and assists you in dealing with your people matters. If you like the newsletter, tell someone about it. If you don't, please tell us. Your feedback is important to us.



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Recent Employment Tribunal Outcomes



Ahmed versus Tesco – religious discrimination

Ahmed claimed that Tesco had discriminated against him on the grounds of his religious beliefs. He claimed he did not know that the job he started in September 2007 involved handling alcohol.

Tesco stated that they had advised Ahmed from the outset what the job entailed and that Ahmed did not raise the fact that he could not handle alcohol.

Ahmed lost his case.

Lesson: When interviewing make sure candidates are made fully aware of the job requirements.

Redrow Homes (Yorkshire) Ltd versus (1) Buckborough (2) Sewell – Working Time Regulations and Definition of a Worker

Mr Buckborough and Mr Sewell were bricklayers and signed a “sub contract for labour only bricklayer conditions and acceptance of offer” when taken on for work with Redrow Homes.

The document stated they:

- o were self-employed;
- o were not required to accept work from Redrow;
- o were responsible for ensuring sufficient labour was available for progress on site;
- o could outsource the work

Mr Buckborough and Mr Sewell complained to Redrow under the Working Time Regulations (WTR). The ET had to decide if the two were workers of Redrow or not. The ET found they were workers and therefore the WTR applied. They were entitled to holiday pay. It stated that at the time the contract was signed it was not expected by any party that the two would seek a sub-contractor where they were not able to carry out the work themselves or that they would refuse any work. It also stated that the obligation for Buckborough and Sewell to ensure there was someone on site to lay bricks as and when required amounted to “personal service”. It described the contract as a “sham”.

The EAT upheld the decision of the ET.

Lesson: To be self-employed four criteria has to be met and practised consistently. One of these is the right of substitution which must be genuine and utilised amongst others.

Wharton versus Ward Recycling – Whistle blowing

Wharton was dismissed for gross misconduct by Ward Recycling following allegations he had made against the employer. He had stated that Ward had been burying pulp paper that should have been recycled.

The ET found that Wharton’s dismissal was automatically unfair because it was prompted by his protected disclosure. He was awarded £19,000.

Lesson: employees are automatically protected when they blow the whistle.

More ET cases here:

http://www.completepeoplemanagement.co.uk/24/?form_16.userid=4&form_16.replyids=10



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MANAGEMENT OF YOUR EMPLOYEES AT CHRISTMAS TIME

There are usually many questions about employment matters surrounding Christmas. The employee's contract of employment, employee handbook and company policies are the first place to seek answers to any related questions. However, if the information is not contained within these, the following may give you some guidance. Alternatively of course, you can get in contact with us on **0208 816 726** or email us on info@completepeoplemanagement.co.uk

Christmas Parties



There are a number of issues that may arise during office parties. They include:

1. Alcohol and drug consumption.
2. Unreasonable behaviour.
3. Damage to property.
4. Personal injury.

Prior to your Christmas or New Year Company event remember to:

- ❖ ask employees of their opinion of the event and decide whether any adjustments should be made in order that they will feel comfortable at the event;
- ❖ plan to serve alcohol and soft drinks;
- ❖ serve food in line with religious requirements. This will include checking the food ingredients. Serving vegetarian food will overcome some difficulties and is a useful option for all employees to take advantage of.

1) Alcohol and drug consumption



The employer has a legal right under the health and safety at work act to refuse employees to work when they are under the influence of alcohol and/or drugs.

The employer must:

- ❖ Send employees home on paid suspension. An investigation must be held with the employee on their return to work when they are sober. This is probably one of the few times that you would not hold an investigation meeting with the employee before you suspend them.
- ❖ Limit the amount of or simply do not provide alcohol to employees at an event for example during a Christmas dinner.
- ❖ Report any use of drugs to the police. Taking drugs is a criminal offence and the employer can be prosecuted under the Misuse of Drugs Act 1971 if



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they are aware that illegal drugs are being used or distributed on the premises.

The employer also has a duty of care towards its employees who attend a Christmas party. To avoid employees potentially drinking and driving it is strongly recommended that:

- ❖ Non-alcoholic drinks are provided. This will also help with absenteeism that can occur the day after the party.
 - ❖ The party ends before the last train, bus, etc, departs.
 - ❖ You provide employees with local taxi numbers and encourage employees to use them.
 - ❖ You hire minibuses to take people home.
 - ❖ You book employees into a nearby hotel or the hotel where the party is being held (if applicable).
- 2) Unreasonable behaviour – the employer is vicariously liable for employees' conduct associated with their employment, even if the event takes place outside of normal office hours and at non-work locations. For example, employees who meet in a bar prior to attending the Christmas party or continue in a night club afterwards. Any unreasonable behaviour is the responsibility of the company. The employer would be wise to:
- ❖ Re-communicate the company Equal Opportunity Policy and Harassment and Bullying Policy prior to the company's Christmas event.
 - ❖ Train and re-train employees on harassment and bullying.
 - ❖ Remind employees that they should behave responsibly at work events and that inappropriate behaviour will be dealt with through the company disciplinary procedure.
 - ❖ Appoint employee representatives to stop matters getting out of control.
 - ❖ Deal with any subsequent employee grievances promptly and professionally.
- 3) Damage to Property – The Company will be liable to pay for damage that an employee causes to someone else's property during a company social event. The company may not be able to claim the money back from the employee unless it states otherwise in the employee's contract of employment. The money cannot be legally claimed via the employee's wages, another method of payment must therefore be sought.
- 4) Personal injury – the company has a duty under the health and safety at work act to take care of employees' health and safety including eliminating risks at the party venue. It is normal practice that personal injury claims do not cover over-zealous celebrations.

Gifts from suppliers, clients, etc



Where gifts and/or tips are allowable under company policy the employee must be made aware that they must notify their manager and the Inland Revenue upon receipt of such items.



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Lateness due to employee hangovers



Employees who report to work late as a result of over indulging are in effect in breach of their contract of employment. The employer must:

- ❖ Not let the matter go un-noticed.
- ❖ Speak to the employee and record the incident on the employee file.
- ❖ Consider disciplinary action.
- ❖ Consider deducting the equivalent monies from the employee's pay. This will only be legal if indicated in the employee's contract of employment.

Sickness Absence during the Festive Season



As with lateness the employer must:

- ❖ Not let the matter go un-noticed.
- ❖ Conduct a return to work interview and record this on the employee's file.
- ❖ Consider deducting the equivalent monies from the employee's pay. This will only be legal if indicated in the employee's contract of employment.

Bank holiday and holiday entitlements



The legal minimum holiday entitlement is now 4.8 weeks -24 days (pro-rata). This entitlement may include bank holidays. For example, most people who work full-time will now get at least 24 days holiday each year, however, if bank holidays are included this means 16 days are holiday days and 8 days are bank holiday days.

During the Christmas and New Year period there are 3 bank holiday days, namely Christmas Day, Boxing Day and New Years Day. Therefore the employer:

- ❖ Cannot enforce a shutdown unless the employee's contract allows for this. Namely, if the employer wishes employees to take the 3 bank holiday days as holiday days this must be stipulated in the employees terms and conditions of employment.
- ❖ Must consider requests for holiday days over this period in the usual way.



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Using the company mail system to send Christmas cards



Where there is no policy, using the company mail system without permission would amount to theft.

If an employee is found to be using the mail system without authorisation then it would be prudent to implement the company disciplinary procedure. Dismissal would be viewed as too harsh a penalty unless the use of the postal system was prolonged.

Using the company computer to order Christmas presents on line



It is prudent for the company to make it clear to employees who have access to the Internet, whether they are allowed to use the Internet for personal use and whether this extends to ordering presents on line.

Reminding employees about their expected conduct over the Festive Season and during company events can remove headaches and anguish at the start of 2008. As an employer you should be able to enjoy this holiday period too.

This month's offers

Redundancy Packs –10% reduction on any pack. Visit here to find out more:

<http://www.completepeoplemanagement.co.uk/6/text/1/files/Redundancy%20Packages%20Autum%20Winter%202008.pdf>

CV services – 10% reduction. Visit here to find out more:

<http://www.completepeoplemanagement.co.uk/67/>



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Snow joke!

As the weather gets colder and the chances of bad weather including snow increases it is the perfect time to implement or review a policy that clearly explains employee's rights when they are unable to report to work due to poor weather conditions such as snow. Although I am not Mystic Meg I would mostly certainly bet that there will be at least one day during the winter that will create havoc to employees travel to work arrangements. Employees will then call work for various reasons e.g. car snowed in, car will not start, windscreen cracked, to name but a few. What's more according to Business Network Magazine September 2008 around 8% of employees will use bad weather conditions as an excuse not to turn up to work.

The question however is how the company should deal with the employees affected. Employers have a duty to provide work to employees and employees have a duty to complete the work - this is the basis of the employment contract. This applies regardless of the weather conditions. As an employer you are therefore within your rights to refuse to pay any employee who cannot attend work under these circumstances. However, it is prudent to consider employee morale, motivation and public relations and therefore to consider reasonable ways to help employees work and therefore get paid on these days. Not paying employees can have a damaging effect on the business, can create employee stress and can impact on revenues due to the loss of hours. It is therefore recommended that employers plan for such events by considering options such as:

- ❖ Working from home.
- ❖ Pay the employee and ask them to make up the time over a set period of time e.g. the next month.
- ❖ Ask them to take the time in holiday leave.
- ❖ Ask them to consider alternative modes of transport.

Whatever the option(s) agreed upon make sure your employees know the company policy by communicating it well in advance of any bad weather conditions occurring.

Contact us on **0208 8168 726** or email us at

info@completepeoplemanagement.co.uk for more information or if you wish us to write a policy covering such matters.



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Review of 2008

In 2008 we covered a number of topics in our newsletters. You can find them all at:

<http://www.completepeoplemanagement.co.uk/newsletter>

Here is a summary of what we covered:

January

- ❖ What's in Store for the Year Ahead?
- ❖ Retirement
- ❖ Dress Standards

February

- ❖ Potential Redundancy Situations
- ❖ Employ 50 or more employees?

March

- ❖ Varying Terms and Conditions of Employment
- ❖ Without Prejudice – What's it all About

April

- ❖ Legislation coming into force this month
- ❖ Managing sabbaticals – time out
- ❖ Well notes

May

- ❖ Legislation coming into force this month
- ❖ Let's spring clean
- ❖ What gets measured gets done

June

- ❖ Email etiquette
- ❖ Alcohol at Work
- ❖ Employment Tribunal statistics

July

- ❖ Maternity and IVF questions and answers
- ❖ Alternatives to redundancy

August

- ❖ TetraMap®
- ❖ What's new from September
- ❖ Grievance Handling

September

- ❖ Emotional Intelligence
- ❖ Managing Poor Performance
- ❖ Business Expansion

October

- ❖ Employment Legislation changes in October
- ❖ Home working
- ❖ 3-steps Statutory Dispute Regulations

November

- ❖ Taking Stock
- ❖ Additional Products and Services

December

- ❖ Management of your Employees at Christmas Time
- ❖ Snow joke
- ❖ Review of 2008
- ❖ What's due in 2009



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What's due in 2009



Working Time Regulations – 1st April 2009

The minimum paid holiday entitlement increases to 28 days from 24 days. The days can include the usual 8 bank holiday days.

Repeal of the Workplace Dispute Resolution Procedures – April 2009

The dispute resolution procedures were introduced in 2004 and most employers have complained about their complexity and the administrative burden that they create. The repeal means the return to the old law on unfair dismissal and the abolition of the statutory dismissal and grievance procedures.

Acas Discipline and Grievance Code of Practice – 6th April 2009

The revised statutory Acas Code of Practice on disciplinary and grievance procedures comes into force. Any breach of the Code of Practice will result in a tribunal increasing or decreasing any award made by up to 25%. We will cover this in more depth early in the New Year.

Extension of the Right to Request Flexible Working – April 2009

Employees will be given the right to request to work flexibly where they have children up to the age of 16. This currently stands at age 6 or under 18 where the child is disabled.

Extension of right to time off for public duties – April 2009

Time off for employees undertaking public duties will be extended to cover members of probation boards, members of court boards and youth offender panel members.

National Minimum Wage (NMW) and Tips and Gratuities – date to be confirmed

Under the current minimum wage legislation tips and gratuities given directly to workers and retained by them do not count towards the national minimum wage. Where the tips and gratuities are paid to the employer via payroll then the tip counts towards the NMW. The government is proposing to amend the legislation to state that tips and gratuities can never count towards the NMW. Watch this space for further news.

Right to request time off for training – date to be confirmed

Employers will be obliged to consider seriously requests from employees to take time off for training. Requests can be refused so long as there is a good business reason for doing so.



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Questions



At **Complete People Management Limited** we want to help you manage your people effectively. If you have a question that you want answered then ask us. We will not disclose your identity. What have you got to lose? *It's free!*

Q: Can I include length of service in redundancy selection criteria?

A: It is recommended that an alternative criterion is chosen when selecting people for redundancy such as:

- ❖ Skills
- ❖ Qualifications
- ❖ Performance appraisal grades
- ❖ Disciplinary warnings
- ❖ Absences (not including maternity related or disability related)
- ❖ Lateness

To use length of service can be considered to be discriminatory on the grounds of age.

The newsletter is sent to you each month and includes information about employment legislation changes and top tips on an employment subject in a concise format. Further advice must be sought before any subsequent action is taken. The information published is without responsibility on our part for loss occasioned to any person acting or refraining from action as a result of information published herein. We welcome your feedback and views so please feel free to email us at info@completepeoplemanagement.co.uk If you know of anyone who may also be interested in receiving the newsletter please ask them to register on the company website or contact us directly.

In the event that you wish to unsubscribe please email us at info@completepeoplemanagement.co.uk **Complete People Management Ltd** is not responsible for the content of external internet sites listed within this newsletter.

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