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Fast friendly advice at the right price

SOLICITORS

Parents of older children will soon be entitled to request flexible hours

The right to request flexible working is to be extended to parents who have children up to the age of 16.

Until now, the right has only applied to parents of children under six or who are disabled.

The announcement by Business Secretary John Hutton follows a review carried out for the Government by Imelda Walsh, HR director at Sainsburys.

There will now be a consultation process on how the proposals should be implemented. It's estimated that up to 4.5 million parents could benefit. However, it should be remembered that although firms must give proper consideration to requests for flexible working, they do not have to grant those requests.

Mr Hutton said: "It is important that employers retain control over deciding whether it suits their business to allow people to work flexibly, but extending the right to request to parents of older children will allow families to take priority when decisions are made."

The review recommended that any change should be implemented at once rather than in stages to avoid creating confusion for both employers and employees. It also found that small businesses had a better record than large ones for accepting requests for flexible working.



More rights for agency workers

Agency workers will be entitled to the same treatment as permanent staff after 12 weeks in employment under a deal agreed between the Government, the unions and the CBI.

The three parties say they have tried to reach an agreement that would protect the rights of workers at the same time as maintaining flexibility for employers.

A joint statement by the Government, the CBI and the TUC says that the equal treatment to which agency workers will be entitled after 12 weeks "will be defined to mean at least the basic working and employment conditions that would apply to the workers concerned if they had been recruited directly by that undertaking to occupy the same job".

The contract clause that cost a developer more than £3.5m

The need to make sure that contracts are completely watertight has been illustrated in a recent case where a dispute over the meaning of a single clause cost a property developer more than £3.5m.

The case involved Chartbrook Ltd and Persimmon Homes. The two companies agreed that Persimmon should build a mixed residential and commercial development on land owned by Chartbrook.

Under their agreement, the amount paid by Persimmon for the land would include an additional residential payment which was defined as "23.4% of the price achieved for each residential unit in excess of the minimum guaranteed residential unit value less the costs and incentives."

The problem then arose as to what that phrase actually meant. Chartbrook interpreted it as meaning that it was entitled to share in the net proceeds



for each unit above the minimum guaranteed amount. Persimmon saw it differently and believed that Chartbrook should receive either 23.4% of the net sales revenue or the minimum guaranteed amount, whichever was the greater.

The stakes were enormous because the difference in cash terms between the two interpretations was more than £3.5m. The High Court ruled in Chartbrook's favour and that ruling has now been upheld by the Court of Appeal.

Persimmon submitted that evidence from

the pre-contract negotiations between the two companies supported its definition of the phrase. However, both the High Court and Court of Appeal ruled this to be inadmissible and said that pre-contract negotiations should not be used to define terms in a contract.

Lord Justice Rimer said: "I would reject any suggestion that this is a case in which it is legitimate, as part of the construction exercise, to have recourse to the pre-contract negotiations. The basic rule is that they are out of bounds." The court ruled that the final wording of the contract was what really mattered and the final phrase contained in the contract clearly supported Chartbrook's interpretation.

It is clear from this case that companies should ensure the wording in a contract correctly reflects the true nature of the agreement. If there is a dispute then it is unlikely that the courts will allow evidence from pre-contractual negotiations to be used.

More women setting up businesses but they still trail behind the men

An increasing number of women are setting up their own businesses to get more flexibility between work and family life, according to Government research.

Most of them are very positive about the benefits of being self-employed with 86% saying they would be prepared to set up their business all over again if necessary.

The research, commissioned by the Minister for Women and Equality, Harriet Harman, reveals that there are now more than one million self-employed women in the UK. That's a rise of 17% since 2000. They still lag behind men, however. Even though women make up half the population, they only account for just over a quarter of the total number of self-employed.

Now ministers are starting a publicity campaign to encourage even more women to set up their own



businesses. Harriet Harman said: "Women want to call the shots by running their own business. They're recognising that being their own boss gives them control and allows them to balance their work and family life."

Anyone thinking of setting up a business should make sure they do their homework first and seek legal advice on a range of subjects such as leaseholds of premises, business contracts and employment matters.

We have helped numerous new businesses get off the ground and are able to offer advice on such things as whether to set up as a sole trader, partnership or a new company. We also have valuable contacts including accountants, surveyors, valuers and financial advisers who can provide added value to the services we provide.

Pubs face instant closure to combat binge drinking

As part of its clampdown on binge drinking the Government is introducing tougher sanctions against licensees who breach their licensing conditions.

Penalties include the instant closure of pubs and clubs in areas where disorder has occurred. The measures were announced in a ministerial statement by the Culture Secretary, Andy Burnham, as he revealed the initial findings of a study to evaluate the impact of the Licensing Act 2003.

Mr Burnham said the findings revealed a mixed picture and the new legislation had not led to the widespread problems that some had feared. The statement said: "Overall, crime and alcohol consumption are down. But alcohol-related violence has increased in the early hours of the morning and some communities have seen a rise in disorder.

"To specifically address the small but unacceptable proportion of violent crimes occurring in the early hours of the morning, we will undertake further comprehensive research into post-midnight drinking patterns and their impact on crime and order, and will not hesitate to take the necessary action through new legislation and enforcement measures to tackle this. But we will take immediate action now.

"First, we will utilise existing powers to

**Tougher sanctions
against breaches of
licensing conditions**



identify problem premises. We will make it easier to review premises where local intelligence suggests there is a problem.

"Second, we will encourage the imposition of tougher sanctions on those found to be breaching their licensing conditions. This includes the stipulation that there be far more instant closures of pubs and clubs in an area where there has been a disorder and indefinite closure by the courts for any breach of licence conditions.

"Third, we will change the offence of "persistently selling alcohol to a person under 18" from 'three strikes' to 'two strikes' in three months. This means that any seller who twice sells to under age drinkers and is caught doing so will immediately lose their licence.

"Finally, the message must be clear to all: breach your licensing conditions and you face severe and costly restrictions on your business – with a new "yellow card and red card" alert system.

A yellow card will put the problem premises on immediate probation together with tough and uncompromising sanctions. And when the circumstances are right, it will be a straight red card leading to withdrawal of the licence."

Mr Burnham said research is still being carried out and there will be further developments over the coming year.

Latest round of Companies Act measures come into effect

More provisions of the Companies Act 2006 which are designed to reduce the administrative burden on private companies have now come into effect.

Two of the most significant changes mean that firms no longer have to appoint a company secretary unless they want to and they no longer have to have the signature of two directors to execute deeds. The signature of one director will be enough provided that it is witnessed.

Further measures now in force redefine small, medium and large companies by new turnover and balance sheet thresholds. There will need to be some changes to accounting and auditing practices, particularly when listing directors' pay.

Several more Companies Act provisions will come into effect on 1st October this year. These include changes relating to trading disclosures, corporate directors and under-age directors, general duties of directors in respect of conflicts of interest, and declarations by a director of an interest in an existing transaction or arrangement.

There will also be new procedures for private companies to make capital reductions supported by a solvency statement instead of by a court order.

Please contact us if you would like more information about any aspect of the Companies Act 2006.

Energy Performance Certificates now extend to business and commercial properties

Thousands of firms will now have to provide Energy Performance Certificates (EPCs) when they build, sell or rent out flats and commercial properties.

The certificates are much the same as those required as part of a Home Information Pack when selling a house. They rate a property's energy efficiency by giving it a grade from A to G. Since 6th April, EPCs have been required for all new homes being built and also for the construction, sale or rent of commercial properties with a floor area of more than 10,000sq metres. That threshold reduces to 2,500sq metres on 1st July and from October the regulations will be extended to apply to all remaining buildings apart from a few minor exceptions.

The measures have been introduced to comply with the EU Energy Performance of Buildings Directive (EPBD). The changes place new responsibilities on anyone constructing a new building or selling or renting out an existing property.

For example, when a new building is completed, the person responsible for the construction will need to obtain a certificate and provide it to the owner. This is obligatory under Building Regulations. The same thing applies if a building is converted into more or fewer units and there are changes to the heating and hot water provision or to the air conditioning system.

When selling an existing building, the owner will have to provide a certificate for all prospective buyers. Landlords will have to do the same for prospective tenants of commercial properties. However, there is no need to provide a certificate

for an existing tenancy; only for a new one. Commercial property certificates are valid for 10 years and if they are still in date when a tenancy changes there is no need to obtain a new one. The regulations will be extended to landlords renting out homes from 1st October.

The certificates have to be provided by energy assessors who are accredited and registered with a government approved scheme. The energy assessments are carried out using standard methods making standard assumptions about energy usage so there can be consistency when comparing the energy efficiency of different buildings. It allows prospective buyers, tenants and occupiers to make energy efficiency and potential carbon emissions a factor when deciding which property to choose.

Some buildings are exempt from the regulations but not many. EPCs will not be required for places of worship, stand alone buildings of less than 50sq metres (except for homes), temporary buildings which won't be used for more than two years and buildings with a low energy demand such as barns and farm outbuildings. In some circumstances, buildings due to be demolished may be exempted.

Understandably, many people regard the new regulations as yet another administrative burden. For others, however, they are an opportunity to improve their chances of selling or renting out a property by making it more energy efficient and so more attractive to prospective buyers and tenants. Whichever view one takes, there is no escaping the need to comply.

Certificates must be provided by accredited assessors



Houses of Multiple Occupation come under review by Government

The Government has begun a review aimed at improving the management of Houses of Multiple Occupation (HMOs) and the conditions of people living in them.

It follows concerns over the so called 'studentification' of many towns and cities which have reported an increasing number of empty properties when universities are closed during the summer months. Many shops, pubs and businesses close down during the quiet periods creating 'ghost towns'.

The Department for Communities and Local Government believes that too many HMOs in one area can have a negative impact on local public services and reduce the opportunities for low-cost home ownership.

It says that some campaigners want to limit the number of HMOs through the use of restraining policies such as refusing planning permission for change of use to an HMO once a certain concentration is reached in an area. In order to do this there would need to be



a clearer definition of HMO for planning purposes. The review will try to identify good practice ideas in areas which are coping well with a high concentration of HMOs and see whether those ideas could be applied to areas experiencing difficulties.

It will also examine whether planning policies can provide a suitable way to tackle these problems. Launching the

review, Housing Minister Caroline Flint said: "It is not acceptable that in too many areas people living in HMOs and local communities alike are having their quality of life affected. We must have balanced, sustainable communities where settled communities can live side by side with those in HMOs.

"The new HMO licensing scheme and tenancy deposit schemes are already making a difference but I want to know what more we can do to provide the right housing in the right place, guarantee proper living conditions for all, and ensure our towns are places people want to live and work in over the long term."

The new review will be combined with the Private Rented Sector review announced in January to look into standards of accommodation and the rights and responsibilities of landlords and tenants.

We shall keep clients informed of developments.

Corporate Manslaughter Act comes into effect

The Corporate Manslaughter Act 2007 has now come into effect making it easier to convict companies of manslaughter if their gross negligence leads to someone being killed.

The new law, effective from 6th April, means companies face unlimited fines if it's found that they caused death due to gross corporate health and safety failures. Firms can also be ordered to take remedial action to rectify the failures that led to the death. The court may also order them to publicise the case giving details of what happened and how much they were fined. The damage to a firm's reputation and brand from such bad publicity could be enormous.

The Government hopes the new law will force company executives to take their health and safety obligations seriously.

The Act removes what used to be a major stumbling block in prosecuting a company for manslaughter. To secure a conviction, it was necessary to prove that all the gross negligence that caused the death could be laid at the door of at least one senior manager or director. This made no allowance for corporate system failures.

Indeed, the piecemeal management approach that may have led to the tragedy could be the very same characteristic that prevented prosecution because the responsibility could be



shared between several people, none of whom could be singled out as the one guilty of gross negligence. The Act focuses on failures by senior management but that doesn't mean that firms could avoid criminal liability by delegating responsibility for safety issues to lower or middle management. In fact, such action could be counter productive as it may be used as evidence of gross negligence in itself.

Directors who are still tempted to cut corners should remember that although the new Act does not increase liability, they can still be held to account as individuals through health and safety laws and the common law of manslaughter.

Firms who haven't already reviewed their safety policies and management systems for ensuring compliance should consider doing so as soon as possible.

Cost of regulation for businesses soars to £65.99billion

The cost to business of regulations introduced since 1998 has risen to £65.99billion, according to research carried out for the British Chambers of Commerce (BCC).

That includes a rise of £10billion in just the last 12 months.

The BCC says the uncomfortable truth for the Government is that the costs keep increasing in spite of two Acts of Parliament designed to reduce the burden - the Regulatory Reform Act 2001 and the Regulatory Reform Act 2006.

The research was carried out for the BCC by the Manchester and London business schools using Government



figures. The findings, known as the Burdens Barometer, lists a top ten of offending pieces of legislation.

The BCC highlights two in particular which it believes the Government should review. These are the Data Protection Act, which has cost business more than £7billion over the last decade,

and the Flexible Working (Procedural Requirements) Regulations 2002 which have so far cost business £1.588billion.

Sally Low, Director of Policy for the British Chambers of Commerce said: "We desperately need an Impact Assessment system that will challenge the need for regulation and a parliamentary process established that provides real independent oversight."

It remains to be seen to what extent the Government will act to reduce the regulatory burden but in the meantime companies need to ensure that they comply with legislation relevant to their business. Failure to do so could lead to increased costs and fines.

This newsletter is intended merely to alert readers to legal developments as they arise. The articles are not intended to be a definitive analysis of current law and professional legal advice should always be taken before pursuing any course of action.

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