# BUSINESS UPDATE

Spring 2011

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## Keeping the peace at work

**Employers often face difficult decisions about disciplining, and sometimes dismissing, staff. Clear discipline and grievance policies can minimise the likelihood of workplace issues arising, and also help you to retain key staff by giving them the means to address any problems they face before matters get to the stage that they want to leave.**

The tough economic climate may be making people more likely to fight redundancy, and financial and employment stress could lead to an increase in discipline and grievance issues. As an employer, you could also be caught by recent changes in the law; for example, the abolition of the default retirement age on 1 October 2011, and the right to request training introduced on 6 April 2010 for organisations with 250 plus employees and applicable to all employers from 6 April 2011.

The Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice on disciplinary and grievance procedures (www.acas.org.uk) should be followed. Although the Code is not a legal requirement, it is strongly recommended that you use it because a failure to do so will tell against you at an Employment Tribunal.

You should define what your company considers to be misconduct; obvious examples include unauthorised absenteeism and inappropriate dress or conduct. You may not govern your employees' conduct outside of work, but depending on your type of business you may require a drug and alcohol policy or a statement about appropriate forms of secondary employment. If you have not updated your internet policy for some time, you could consider including a rule against posting negative comments about the company and its staff online.

Extraordinary circumstances aside, if misconduct results in a disciplinary procedure then a three-stage process should be followed: a letter, a meeting, and an appeal procedure. Employers should first write to the employee, setting out the nature of the issue and reminding the employee of their right to have a representative present at the meeting. Always thoroughly investigate the facts and allow employees to make their defence in full. If you do decide to take action after the meeting, this should take the form of a written warning and a timescale for improvement. Failure to improve would then lead to a final warning.

Whatever you intend to achieve with your discipline and grievance policy, you should ensure that your aims and they way they are communicated to employees are both clear and reasonable.


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# A reduced sense of relief?

**You could be affected by the Government's latest plans to reduce the amount of tax relief available to individuals on contributions to pension schemes. The plans were announced in mid-October and are designed to replace the special annual allowance charge rules from 6 April 2011. The necessary legislation will form part of this year's Finance Bill.**

From 6 April 2011, the annual allowance will be reduced from £255,000 per tax year to £50,000. It will remain at this level until at least 2015/16, after which the Government will 'consider options for indexing the level'. Several other changes are proposed:


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- The rate of the annual allowance charge will move from the current flat 40% to a variable rate, pitched at a level equal to the average rate of tax relief given on the excess contribution. The rate will, therefore, normally be between 40% and 50%.
- A new basis will apply for valuing the increase in benefits if you are an active member of a defined benefits scheme. This will incorporate an adjustment for inflation (as measured by the consumer prices index), but will potentially result in a higher value being placed on significant increases in pension rights.
- A new three-year 'carry forward' of unused annual allowances will be introduced from 2011/12. Initially you will be able to carry forward unused annual allowances from 2008/09, 2009/10 and 2010/11, provided you were a member of any registered pension scheme during the relevant tax year.

  The exercise will assume that a £50,000 annual allowance applied for those years (rather than the actual figure) and use a notional carry forward calculation if total contributions exceeded £50,000 during a tax year.
- From 2012/13, the lifetime allowance will be cut from £1.8 million to £1.5 million, although new transitional reliefs will limit the impact of this change.

For contributions made after 13 October 2010 there are complex rules based on the end date of each pension arrangement's pension input period. If you have made contributions since that date, or are planning to make contributions before the end of the tax year, the best course of action is to seek our advice.

**Did you know that all employers have to file in-year PAYE forms online from 6 April 2011?** These are all forms P46 for new employees, including P46(Pen) used when a new pension starts, and P46(Expat) used when an employee is seconded to work in the UK. In addition, parts 1 and 3 of the form P45 must be submitted to HMRC online. Employers with 50 or more employees already have to file these forms online. If you fail to file PAYE forms online when required to do so, you could be charged a penalty of up to £3,000.


# Worthless shares may still have value

**Do not despair if you find yourself in possession of worthless shares – there is tax relief available to you.**

## Negligible value claim

You can submit a negligible value claim if the company has not been wound up. This creates a deemed capital loss in your hands, equal to the amount you paid for the shares.

You can set this loss against gains arising in either of the two tax years ending before the year of the claim, if the shares were worthless at that date. But if you currently pay capital gains tax (CGT) at 28% the loss will be worth more in this year than in an earlier year, when CGT was just 18%.

This negligible value claim can apply to quoted or unquoted shares. However, when the company is dissolved you are deemed to have disposed of your shares, so the negligible value claim is unnecessary.

## Income tax loss claim

Once you have established a capital loss, you could claim to have that loss set against your income for the current or previous tax year. However, this share loss relief claim has the following pre-conditions:

- The shares must be issued by an unquoted trading company or under the Enterprise Investment Scheme (EIS); and
- You must have subscribed for the shares, or acquired them from your subscriber spouse or civil partner.

HM Revenue & Customs (HMRC) previously refused claims where unquoted shares were subscribed for in joint names or by a nominee, but not if the shares were EIS shares. From 11 October 2010, HMRC decided to accept claims for share loss relief relating to unquoted shares from joint or nominee subscribers.

If you made a claim for share loss relief in 2009/10 or 2010/11, which was rejected on these grounds, you can ask HMRC to reconsider it. Any such claims that are under enquiry will be reconsidered in light of this new practice. The deadline for submitting claims relating to a share loss arising in 2009/10 is 31 January 2012.

Before you launch a new claim for share loss relief, talk it through with us, as there are a number of other factors that could scupper such a loss claim.

**Did you know that, if you are VAT registered, you can now reclaim VAT incurred on business expenses incurred in other EU countries?** You complete your claim in English on the HM Revenue & Customs (HMRC) website, and HMRC forward it to the relevant country. The minimum annual claim per country is €50. Claims for VAT incurred in 2010 must be submitted by 30 September 2011, but the deadline for refunds of VAT incurred in 2009 has been pushed back to 31 March 2011. Your refund will be paid directly into your business bank account, but you could suffer high bank charges on the conversion of euros to pounds sterling.

# New rules for new parents

**The new additional statutory paternity pay (ASPP) and leave is available for parents of babies due or matched for adoption on or after 3 April 2011. The aim is to allow both parents to share the 39 weeks of paid maternity or adoption leave, and the 13 weeks of unpaid leave which can be claimed by the new mother or the primary adopter.**

The old statutory paternity pay is renamed 'ordinary statutory paternity pay' (OSPP). This can be paid for one or two weeks within 56 days of the birth or adoption placement.

The new ASPP can only be paid between the time a child is 20 to 52 weeks old, and the mother has returned to work. The additional paternity leave can last for up to 26 weeks, but the paid part of that leave (ASPP) may only extend up to 19 weeks. The ASPP is the surplus statutory maternity pay (SMP) the mother has not taken, or the equivalent statutory adoption pay (SAP). But the mother must have taken at least two weeks off work after the birth, or have at least two weeks of SMP remaining for ASPP to be paid. Special rules apply if the mother or the child dies.

For both OSPP and ASPP the employee must:

- Give the employer at least eight weeks' notice of the date the leave is to begin;
- Be employed for at least 26 continuous weeks up to the 15th week before the child is due or matched for adoption; and
- Have average weekly earnings of at least the national insurance lower earnings limit (£102 a week for 2011/12).

HM Revenue & Customs has produced standard forms to claim the ASPP in the case of births (SC7), UK adoptions (SC8), and overseas adoptions (SC9). These claim forms include declarations for the mother or primary adopter to sign.

The ASPP is paid at the lower of 90% of the employee's average weekly earnings and a flat rate (£128.73 a week in 2011/12). It is subject to national insurance, just like normal pay. Employers can reclaim 92% of the ASPP, or 104.5% of the ASPP if the employer's annual class 1 NIC liability (employers and employees) is no more than £45,000.

# The immigration cap still fits

**Despite the Government's pre-Christmas setback in the High Court, where it was held that the temporary cap on non-EU migrants was unlawful on procedural grounds, the permanent cap to be imposed by an Act of Parliament in April is back on the cards.**

Since the Government lost only on a technicality – its failure properly to consult Parliament – the measure was reintroduced within a week of the ruling. As workers from the EU are exempt, the cap falls on non-EU workers, many of whom – research scientists and medical professionals, to name but two categories – are badly needed by the health service and cutting-edge businesses. The temporary cap limits entries of skilled workers from outside the EU under Tiers 1 and 2 of the current points-based system.

Many leading businesses, organisations (like the Confederation of British Industry) and immigration lawyers warned that the cap could leave British businesses at a significant competitive disadvantage. To allay these concerns, the Home Secretary announced in November that intra-company transfers, i.e. secondments to the UK within a multinational group of companies, would be largely exempt if the job to which the employee was coming paid more than £40,000 (as opposed to the current £24,000 minimum). Businesses will have to find ways to adapt the permanent rules so that they can hire according to their needs.

Faced with the new lower levels of permitted non-EU workers, employers may have to fill gaps in the interim by recruiting on a short-term contracts people who may not be the most appropriate appointee.

There is always a silver lining. For highly skilled UK freelancers and umbrella contractors (freelancers working through a so-called umbrella company, which employs freelancers and concludes contracts on their behalf with employers, while taking care of all their tax and paperwork), the cap may present new work opportunities. They could find themselves in demand for short-term contracts where their particular skills fit the bill, in preference to hires of UK and EU permanent staff who may not be able to provide the precise experience required.

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**Did you know that it will be compulsory for companies to file their corporation tax return online from 1 April 2011?** A company already has to file its end of year PAYE returns online (forms P14 and P35), unless you have claimed exemption (either on religious grounds, or for care or support employees, or operate the simplified PAYE scheme for domestic workers). These tax returns must be submitted within strict deadlines. To accommodate delays in the post for paper forms, there was an extra statutory concession whereby the filing deadline was extended by seven days. This extension has been withdrawn with effect from 31 March 2011.

# Agency Workers Directive still on course

**The Government has announced that it will be making no changes to the Agency Workers Regulations, which come into force on 1 October 2011. The Regulations give effect to the European Agency Workers Directive (AWD), and were laid in January 2010 after agreement had been reached between the Confederation of British Industry and the Trades Union Congress.**

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The AWD requires that temporary workers hired through an agency have basic conditions (e.g. pay and working time) that are at least equivalent to those that apply to workers doing the same job and who were directly hired by the employer. Although in principle the AWD requires this to be effective from the day a temporary worker is hired, subject to agreement by social partners each member state can impose a reasonable qualifying period.

On this basis, the Labour Government obtained the agreement of business and unions to a qualifying period of 12 weeks, during which a worker could be hired before the Regulations apply.

Following consultation, the coalition Government has concluded that any changes it might wish to make to ease the burden on business would not be worth the risk of jeopardising this 12-week period. The Government will instead spend the time available in developing guidelines to help employers comply with their new obligations.

# The FHL tax sands shift again

**If you have a furnished holiday letting (FHL), you will be affected by the three major changes proposed for their taxation.**

In April 2009, the Government announced the special tax reliefs that apply to FHLs in the UK would also apply where the property was located in a European Economic Area (EEA) country. These countries comprise all 27 EU member states plus Iceland, Liechtenstein and Norway.

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From 6 April 2011 (1 April 2011 for companies), the profit or loss from FHL accommodation in EEA countries (other than the UK) must be calculated separately from the profit or loss arising from UK holiday lettings. Profits and losses from any other overseas lettings must also be calculated separately. The intention is to restrict the set-off of losses, especially where incurred by FHLs in the EEA.

Also from April 2011, if you make a loss from your FHL properties in the UK or elsewhere you will not be able to set that loss against your other income in order to generate a tax repayment – although in most cases the loss relief claim will simply reduce the amount of income tax payable. The loss can only be set against future profits from the same FHL business (either UK or EEA-based). This may mean your FHL business will be uneconomic from April 2011, so we need to discuss your options for closing down or converting this business.

The periods a property must be let to qualify for the FHL tax reliefs are to be extended from 6 April 2012 (1 April 2012 for companies). The property must be let commercially as furnished holiday accommodation for 105 days a year (previously 70), and be available for letting for 210 days (up from 140). If you let a number of FHL properties you can average let days across all your FHL properties in the UK for a tax year. You can also average the let periods for all your other FHL properties located in other EEA countries.

Once a property qualifies as FHL, it may fail the letting condition for up to two years and continue to qualify, if you elect for the FHL tax status to apply. This can only be done if averaging is not used.

These new tax rules will affect holiday lettings businesses differently in different geographical areas, so we need to discuss the particular circumstances of your business as soon as possible.