



**ADDRESS:**  
70a Guarlford Road,  
Malvern, Worcs  
WR14 3QT

**TELEPHONE:**  
07815 090139 /  
07833 907724

**EMAIL:**  
info@painterandcole-  
humanresources.co.uk

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## Corporate Manslaughter

After years of debate, the **Corporate Manslaughter and Corporate Homicide Act 2007** came into force on 6<sup>th</sup> April. Organisations will be prosecuted if the way their activities are managed leads to a person's death and amounts to a gross breach of a duty of care. The new law is likely to be used by prosecutors for a wide range of workplace fatalities from large-scale disasters to driving for work cases. The act is designed as a powerful deterrent to organisations lacking adequate health and safety arrangements. It will make it easier to prosecute companies and secure convictions, with current proposals suggesting fines ranging from 2.5 per cent to 10 per cent of gross annual turnover.

### **What should employers do?**

Companies need to have a strong proactive approach to Health and Safety and ensure that responsibility for the management of H&S is led from Board Level. On a practical level, you should ensure that:

- Health and Safety requirements are clearly stated in senior manager job descriptions / key responsibilities
- Managers are adequately trained to meet these requirements
- Review your disciplinary policy to ensure that failure to meet H&S requirements is a disciplinary matter for all staff.
- Ensure that staff are able to report breaches of health and safety (confidentially) and that clear lines of communication exist between managers and workforce.

## Check Staff are able to work in the UK!

The Government has tightened the law on illegal working in an attempt to manage the increasing numbers of migrant workers in the UK.

From 29<sup>th</sup> February 2008, the **Immigration and Nationality Act 2006** replaced the Asylum and Immigration Act 1996 and employers have new obligations for employees recruited after that date. The penalties for getting it wrong are tougher under the new act and include:

- A Maximum fine of £10,000 per illegal worker (double the previous fine)
- Knowingly employing an illegal worker will be a criminal offence, carrying a maximum of 2 years imprisonment, or unlimited fine.

### **What should employers do?**

Employers need to ensure that they carry out initial checks before recruiting a prospective employee. This involves checking and copying documents specified by the Border and Immigration Agency (BIA) such as a birth certificate, combined with a document listing, a UK NI number or a work permit and a passport. Employees will also need to:

- Undertake document checks at least once a year for those employees that have limited leave to remain in the UK.
- Make sure that these initial checks are conducted on all staff (not just migrant workers) to avoid any potential racial discrimination claims.



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## Agency Worker Rights

A recent Court of Appeal decision has put the treatment of agency workers in the spotlight at a time when both a private members bill and a proposed new European Directive are attempting to give these workers the same rights as permanent staff.

The case **James V Greenwich Council** involves an agency worker who worked for the council from 2001 to 2004, changing agencies midway through that period. With the new agency, she was contracted on a self-employed basis and expressly agreed that there was no contract of employment between her and either the agency or the council. Whilst she wore a council uniform and took instruction from its management, she was not paid directly from the council.

While she was off sick in 2004, the agency supplied the council with another worker. On her return from sickness, there was no job for her and as a result, she brought a claim of unfair dismissal against the Council. The case was heard at the Court of Appeal who ruled that she had failed to demonstrate that she

was an 'employee' of the council and therefore could not bring a claim for unfair dismissal. The decision is significant as it closes the door on the notion raised by the *Dacas v Brook Street Bureau* case that the 'mere passage of time' with an organisation could justify an implied contract between a worker and end user. This does not mean that agency workers will never be able to claim they are employees of an end user, but if there is contractual documentation regulating the relationship, it will be an uphill struggle.

### **What action should employers take?**

- If you engage agency staff you have a clear contract in place with the agency regarding the employment relationship.
- Remember that whilst agency staff may not be able to claim unfair dismissal, they are still entitled to holiday and rest breaks under the **Working Time Regulations**, and are protected by the **National Minimum Wage** provisions and **Discrimination law**.

*Further advice will be given once the outcome of the Private members bill and European Directive is known.*

## Calculating Redundancy Pay

We have recently had a number of enquiries about employee entitlement to redundancy. Here are the statutory entitlements:

### **Statutory redundancy pay:**

Maximum payment is 30 weeks pay or £9,900, (minimum qualification 2 years continuous service).

### **Calculating Redundancy Pay:**

Employees aged up to 21 – half a weeks pay for each year worked.

Employees aged between 22 and 40 – One weeks pay for each year worked.

Employees aged 41 and over – one and a half weeks pay for each year worked.

*Source: (BERR) Department for Business, Enterprise and Regulatory Reform. For a ready 'reckoner' on calculations [www.berr.gov.uk/employment/employment-legislation/employment-guidance/page33157.html](http://www.berr.gov.uk/employment/employment-legislation/employment-guidance/page33157.html)*

**We would be pleased to provide advice or assistance on any of the matters raised in this Newsletter.**

*Whilst every care has been taken in compiling these notes, we cannot be held responsible for any errors or omissions; the notes are not intended to be a substitute for specific advice.*