

Statutory Grievance Procedure

The Employment Appeal Tribunal has held that where an employee raises a grievance and expressly states that it is an informal grievance, an employer must still treat it as a formal grievance and comply with the statutory grievance procedure, inviting the employee to a formal meeting and following all of the relevant steps. The EAT concluded that the only issue for an employer to consider is whether the grievance satisfies the statutory grievance procedure, ie that the grievance is set out in writing and sent to the employer. It does not matter whether or not the grievance itself is stated to be a statutory grievance.

On a slightly more positive note for employers, the EAT did note that the tribunal had a discretion as to whether to uplift any compensation for failure to follow the procedure in such circumstances.

Get Up to Date With Our Experts

With employment and immigration laws changing so frequently, are you worried you aren't as up to date as you should be? Would you like the opportunity to discuss your HR and workforce issues with others in a similar position, who understand exactly what you're facing? If so, book a place at our Employment & Immigration Law Conference on 22 January. Our experts will guide you through recent changes in the law. You will have the chance to talk with the speakers and other delegates in three workshops. Topics to be covered include redundancy and important changes to employing foreign workers.

The half-day conference will take place at Prested Hall in Kelvedon, just off the



A12. The event will cost £40+VAT, and includes a full English breakfast to get your day started. For further details please contact 01206 217605, email conference@birkettlong.co.uk or book online at www.birkettlong.co.uk.

Maternity Changes

Changes to maternity leave entitlement have recently come into force. The main changes are that employees currently on maternity leave or due to go on maternity leave whose babies are due on or after 5 October 2008 will continue to benefit from all of their terms and conditions in accordance with their contract of employment (with the exception of pay) during both ordinary and additional maternity leave.

Previously, employees were only entitled to such benefits during ordinary maternity leave (ie the first 6 months of leave). What this means is that benefits such as contractual holiday and gym membership will continue to accrue during the 12 months' maternity leave entitlement.

Pension contributions are only required to be made during the paid period of maternity leave which in most cases will be the statutory 39 week period during which maternity pay is applicable.

Working Time Regulations

Much to the relief of many employers, an agreement has been reached with the EU Employment Council ensuring the continuance of the right of employees to choose to work longer than the 48 hours per week as specified under the Working Time Regulations. This will mean that businesses will continue to be able to have market flexibility and compete with other markets, particularly good news in the current climate.

BIRKETT LONG LLP

COLCHESTER OFFICE:
ESSEX HOUSE
42 CROUCH STREET
COLCHESTER CO3 3HH

T 01206 217300

CHELMSFORD OFFICE:
NUMBER ONE
LEGG STREET
CHELMSFORD CM1 1JS

T 01245 453800

E EMPLOYMENTLAW@BIRKETTLONG.CO.UK
WWW.BIRKETTLONG.CO.UK



Employing Overseas Nationals

Licensing, Illegal Working and the Effect of Recent Changes of TUPE Transfers

Following recent changes in the law and the introduction of "Tier 2" of the new immigration system, businesses intending to employ workers from outside the EEA or teach foreign students must register with the UK Border Agency (UKBA). Organisations who fail to register on the Sponsor Licence Register cannot employ these workers or teach foreign students. Employers must register by 1 October 2008 to continue to apply for work permits or extensions (now called Certificates of Sponsorship). A points based system has been introduced requiring individuals to meet certain criteria before they can be issued with a Certificate of Sponsorship by a registered employer.

- To date, as few as 200 organisations have registered as required. This may be due to a lack of awareness of the need to do so, or because of a perception that the registration process is complex.
- The Sponsor will have specific duties and responsibilities monitored by the UKBA. The UKBA award a Sponsor a rating of A or B, depending on the Human Resources systems in place. If a Sponsor has been awarded a B rating, they are provided with an action plan by UKBA to improve their Human Resources systems. This action plan will be monitored by the UKBA and last up to a maximum of 12 months. Failure to reach the required standard at the end of 12 months may mean that the Sponsor's Licence is withdrawn. Withdrawal of a licence invalidates the work permits and Certificates of Sponsorship of all existing employees, who would become

illegal workers. The employer would then be liable to criminal or civil penalty sanctions.

- A prospective employer will need to demonstrate to UKBA that they have procedures in place to hold up to date information concerning the foreign worker or student in order to monitor their attendance. This information must also be readily available to the UKBA upon request. The UKBA now has powers to visit business premises unannounced to assess compliance. Any information held on foreign workers or students must be readily available to UKBA upon request for their inspection.
- Any employer applying to register as a Sponsor should first review their systems to ensure compliance prior to any application for a licence being submitted. Submitting an application will trigger an assessment visit by the UKBA. The onus is now on an employer to issue the Certificate of Sponsorship (equivalent to the old work permit), hence the introduction of the strict requirements, rules and responsibilities. Once the Certificate of Sponsorship (COS) has been issued by the prospective employer, the foreign worker must then apply for Further Leave to Remain or Entry.

Statutory Minimum Wage

The statutory minimum wage increased on 1 October to **£5.73 for adult workers (from £5.52); £4.77 (from £4.60) for workers between the ages of 18-21 and from £3.40 to £3.53 for workers aged 16 and 17.**

Lay off and Short Term Working

In these difficult financial times many of you will be considering reducing your workforce. As an alternative to redundancy, you may wish to consider laying off employees. You can only lay off employees if there is an expressed contractual right agreed between you and your employee and such agreement will only be enforceable if they are incorporated into each affected employee's contract of employment. If there is such a clause in the contract you may be able to lay employees off without pay, although they may be entitled to a statutory guarantee payment which is a limited payment of a maximum of 5 days in any 3 month period.

Another alternative to redundancy is putting employees on short time working. Again, you need to have an express or implied right to lawfully reduce the amount of pay or alternatively you should try to negotiate this with the employees if the issue arises.



Birkett Long LLP is regulated by the Solicitors Regulation Authority
Birkett Long LLP is authorised and regulated by the Financial Services Authority

Whilst every care and attention has been taken to ensure the accuracy of this publication, the information is intended for general guidance only. Reference should be made to the appropriate adviser on any specific matters.
© Birkett Long LLP 2008. We hope you find this newsletter of interest, but if you would prefer not to receive it or wish to receive a copy via email, please contact the Business Development and Marketing Team on 01206 217605.

Reference: NEWS/EMPLOY05/2008

BIRKETT LONG LLP	
COLCHESTER OFFICE:	CHELMSFORD OFFICE:
ESSEX HOUSE	NUMBER ONE
42 CROUCH STREET	LEGG STREET
COLCHESTER CO3 3HH	CHELMSFORD CM1 1JS

T 01206 217300 T 01245 453800

E EMPLOYMENTLAW@BIRKETTLONG.CO.UK
WWW.BIRKETTLONG.CO.UK