

## Changes to first aid training regime

New changes to the first aid training regime have been implemented. These changes do not include changes to employers' legal responsibilities to give training but merely apply to the guidance on first aid training. They are meant to try to make first aid training more flexible for employers.

The changes, effective, 1<sup>st</sup> October 2009, and they include:

- The replacement of the mandatory four day 'first aid at work' course to that of a mandatory three day 'first aid at work' course;
- A new option of a one day 'emergency first aid at work' course for smaller businesses;
- It will be strongly recommended that all employees trained in first aid go on an annual refresher course in order to review the basic skills and keep up to date with changes, yet this is not a mandatory requirement.
- The requirement of all employees trained in first aid to attend a two day course every three years in order to renew their certificate will be maintained.

Employers should note that any employee with a 'first aid at work' certificate would only have to take the new course when their current three year certificate expires. Also any training organisation currently approved by the HSE will be automatically approved for the new course changes.

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## Weekly Pay Limits

On October 1<sup>st</sup> 2009 the weekly pay limit used to calculate statutory redundancy money rose from £350 to £380. This increase will also apply to Employment Tribunal basic awards and compensation for non-compliance with flexible working procedures.

The weekly pay limit would usually be adjusted during February of each year, however, as this change has taken place so late in the year there will be no change in February 2010, and the next adjustment is set for February 2011.

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## Without Prejudice Discussions

In *Oceanbulk Shipping & Trading SA v TMT Asia Ltd & Ors* the High Court has allowed "without prejudice" discussions to be used as admissible (acceptable) evidence to the same extent as it would be if it was not a without prejudice discussion. The judge added that the reason without prejudice discussions would usually be inadmissible is due to public policy and is not an absolute rule. The Judge also stated that generally without prejudice negotiations that fail to result in a settlement are inadmissible as evidence in later litigation procedures. However, if they result in a settlement they can be admissible in subsequent litigation regarding the meaning and effect of the settlement.

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Should you have any queries relating to the information that you have read in this update please do not hesitate to contact one of employment law specialists either by telephone or e-mail on the details shown below.

## Sickness when on Holiday

Employees will now get extra holiday if they fall ill on planned holiday leave. This decision was handed down in *Pereda v Madrid Movilidad* where the European Court of Justice held that a worker who is sick during previously planned leave is entitled to the holiday days missed. On their return to work, the employee will then have to request to take the leave missed at another time.

This judgement could be open to criticism as it allows an employees to gain extra holiday if they are ill during a period of holiday. This could lead to abuse from employees. However, the reasoning for this judgement is that an employee should have at least four weeks holiday a year and if they are sick during this holiday, then they should be entitled to take the missed holiday time. The logic is that being off sick would not offer a break or relaxation, which is the whole purpose of holiday leave.

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## Grievance Procedure no longer applies to claims for Redundancy, Holiday Pay & Unpaid Wages

In a recent case brought before the Employment Appeal Tribunal (EAT) the presiding Judge has criticised grievance procedures and stated that they no longer apply to redundancy, holiday pay and unpaid wages. He criticised the procedure as having been confusing and contradictory and that the initial reason for the procedure was meant to reduce the amount of cases heard in the employment tribunal. It was hoped that employers and their employees would resolve their differences with the use of Dispute Resolution, yet its implementation has given rise to more litigation, often about obscure points of law that seem irrelevant and unnecessary.

In *Allen & Others v Murdoch* three employees at a pub tried to bring a claim to the tribunal for unfair dismissal, redundancy payments, unpaid wages, and holiday pay. Their claim for unfair dismissal was allowed by the ET as grievance rules do not apply to unfair dismissal. However, their other claims failed because the ET held they could not accept jurisdiction of the case as the proper grievance procedures had not been followed, in that they had not waited 28 days after sending their grievance letter before they tried to bring their claims forward.

The employees appealed to the EAT and were successful. The presiding Judge held that the grievance procedures did not apply to any of their claims, and therefore, the employees won their appeal. The judge cited the Employment Act 2002 (Dispute Resolution) Regulations 2004 and the Employment Tribunals Extension of Jurisdiction Order 1944 when giving the reasoning for his decision and held that:

- In regards to redundancy payments the grievance procedures did not apply as redundancy payments are only relevant where there has been a dismissal, and, considering that grievance procedures do not apply to unfair dismissals then they should not apply to redundancy payments;
- In regards to holiday pay similar reasoning was given to that of redundancy payments as disputes for holiday pay can only come from a dismissal so if the procedures do not apply to unfair dismissals then they should not be applicable to holiday pay;
- In regards to unpaid wages, the judge held that these were claimed as a breach of contract and breach of contract claims do not have to follow grievance procedures.

Saying this, however, it is best for employees to raise a grievance and for employers to deal with them as quickly and as thoroughly as possible to avoid having to attend the employment tribunal and becoming bogged down in lengthy employment litigation.

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