

Stop press

The Safeguarding Vulnerable Groups Act 2006 which came into force on 8th November 2006 to help prevent unsuitable people from working with children and vulnerable adults will be implemented in phases. From 12th October 2009, the Independent Safeguarding Authority (ISA) will administer two barring lists under the Act. The Government has recently announced that the Vetting and Barring Scheme will now be phased in over a period of time as opposed to 12th October 2009. From 26th July 2010, all new entrants to roles working with vulnerable groups and those switching jobs within these sectors may register with the ISA and be checked by them. From November 2010, all employees carrying out a regulated activity must register with the Scheme.

hospitality news Summer Special

In this extra issue, we provide practical tips on how to manage two major HR challenges in 2009:-

- The recession and impact on hotel occupancy rates and restaurant bookings;
- H1N1 flu pandemic and impact on the stability of the workforce.

For more detailed advice, please contact

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Crisis management

This year is set to be the *annus horribilis* for many hotels and restaurants as the credit crunch continues to pervade and cripple the economy. Just as the hospitality industry battle with cost-cutting exercises in response to reduced occupancy rates and custom, the UK looks likely to be plagued by another crisis: the H1N1 flu pandemic. An economic meltdown coupled with a flu pandemic carries with it serious ramifications for operators.

Credit crunch, reduced hotel occupancy rates and empty restaurants

According to statistics published by TRI Hospitality Consulting, profit for London hotels fell by 8.7 per cent in Q4 2008 and by 16% in Q1/2009. The average occupancy rate for Q1/2009 was in the region of 72.9%. In April 2009, average occupancy rates for London hotels went up to 85.2% due to the Easter break and strong leisure demand reaffirming a notable shift from high yielding corporate room lets.

Nearly a third more restaurants went bankrupt in 2008 than in 2007. Figures from a recent PricewaterhouseCoopers report suggest the restaurants and pubs have been hit harder by the financial downturn than any other part of the hospitality industry as corporate entertaining is cut and consumer disposable income is squeezed.



Drop in occupancy rates and reduced custom inevitably affect the bottom line for businesses which in turn requires staffing levels to be reduced. In response to the current market and trading conditions, many employers have been avoiding compulsory redundancies through various measures. Cost-saving measures can be implemented in four key areas across the business:-

Reducing headcount

- Restrict recruitment
- Withdraw job offers
 - Defer new joiners
- Reduce non-permanent staff
 - Secondment
- Redeployment and retraining
 - Early retirement
- Shadow redundancies

Temporary stoppages

- Sabbaticals
- Unpaid leave
- Holidays
- Lay-offs

Reducing hours

- Short-time working
- Part-time and flexible working
 - Overtime bans

Reducing remuneration

- Salary sacrifice
- Freeze pay
- Reduce pay or benefits
- Change pension arrangements
- Bonuses
- Tighten up existing policies (e.g. expenses)

The key challenge for HR has been securing employees' consent to a variation of their contract. Given the current climate and sensitivities, employee resistance has been manageable in most cases, although some trade unions have criticised various employers for using the threat of redundancy to achieve cost savings.

Change programmes have been successful where communication on the business reasons for change is effective and where the changes (such as a pay cut) are either time limited or subject to review within an agreed period.

One successful strategy which has proven popular involves offering employees severance pay based on their original terms and conditions of employment should they accept a pay cut and are made redundant within say a three to six month period. Other successful strategies include offering employees 85% pay for agreeing to reduce from a five day week to a four day week and offering employees 50% pay to take days off or sabbaticals. British Airways is reported to have asked employees to voluntarily take unpaid leave or unpaid work for a month with salary reductions spread across three to six months in its "fight for survival".

Compulsory redundancy programmes

Where redundancies are unavoidable, it has been difficult for employees to challenge their dismissals given the current economic landscape, except in relation to the selection criteria. Some employers have also used the current climate as an opportunity to remove “difficult employees” on business related grounds. The key challenge with compulsory redundancy programmes, however, lies in collective redundancy consultation, as this process adds to management time, employment-related costs and morale issues. As purse strings are tight, most employers do not have the luxury of offering employees 90 days’ pay to avoid a protective award and ensure a quick exit for employees. In addition, notice for termination cannot generally be given unless the minimum statutory consultation periods have been exhausted. This means that large redundancy exercises have to be spread over several months to avoid triggering the 90-day consultation period for dismissals under s188 of the Trade Union and Labour Relations (Consolidation) Act 1992. Alternatively, overall exit packages need to be generous enough for employees not to sue for a protective award.

In April 2009, the government announced that the statutory week’s pay will increase from £350 to £380. This one off increase is anticipated to take effect on 1 October 2009 replacing the 1 February 2010 increment. The timing of this increment will make any redundancies later in the year more expensive for employers.

Employee engagement

Another challenge for employers is to keep employee engagement high on their agenda. When managing survivor syndrome in the organisation, businesses will need to manage employee expectations and set a clear sense of direction, keep employees in the loop even where there is little definite news, and beat the rumour mill. There are non-financial ways of motivating employees, such as recognition schemes, team-building days and employee rewards. Even in difficult times, employees who merit a promotion or pay rise should not be ignored, as this sends them the wrong message. Employers need to think long-term and consider how best to time and deliver negative and positive news to keep employees engaged. Acas and the Chartered Institute of Personnel and Development (CIPD) have recently co-produced a practical guide on managing change in the workplace (see http://www.cipd.co.uk/subjects/emplaw/redundancy/_hwmngwrfrcs.htm)

Protecting your business

Employees who lose their jobs through compulsory redundancies or who have survived the guillotine but are disaffected with their organisation may seek to compete with their ex-employers. As redundancies rise, departing employees are more likely to steal sensitive information. This is another area of risk which needs to be managed to protect the business particularly for senior management staff and those in sales and marketing functions.

Apart from expensive injunction proceedings to enforce your restrictive covenants, some practical steps to minimise the risks of unlawful competition include:

- monitoring employees who may be taking preparatory steps to compete (which might be revealed through e-mails, unusual business activities and unsocial working hours);
- taking disciplinary action against employees who steal corporate information;
- carrying out exit interviews to identify reasons for an employee’s resignation and discussing their future intentions;
- enforcing garden leave or agreeing with employees that they will stay on garden leave in the absence of a contractual right;
- ensuring that employees return all confidential and proprietary information which belongs to the company before they leave;
- reminding employees of their post-termination restraints, including misuse of confidential information; and
- linking any enhanced severance payments with new post-termination restraints.

H1N1 pandemic

At the time of publication, the World Health Organisation has declared a H1N1 pandemic although it considers the overall severity of the influenza pandemic to be moderate. In the UK, the number of reported swine flu cases has exceeded 1000 with 176 cases in the city of London. The scale of the pandemic (unless effectively contained) will no doubt have a negative impact on air travel, hotel occupancy rates and dining in public areas. Infection rates may well become exponential as the winter months descend on us.

The Civil Contingencies Secretariat of the Cabinet Office and Health & Safety Executive have issued guidance on how employers should prepare for an influenza outbreak. The checklist is very useful and will help employers devise a preparedness plan (see <http://tiny.cc/NsP9v>).

Understanding how the H1N1 virus works

According to the Health & Safety Executive, the H1N1 virus is easily passed from person to person typically within a one metre range when an infected person talks, coughs or sneezes. It can also spread through hand/face contact after contact with anything that may become contaminated with the virus. Illness usually develops within two to three days after being infected although carriers of the virus can be asymptomatic.



Preventative measures

Vaccination or Tamiflu treatment as a preventative measure is advisable, but such programmes are rarely made compulsory unless the nature of the job is such that vaccination has to be a condition of employment. The vaccination policy should ideally set out the consequences of refusing to be vaccinated without a valid reason – for example exclusion from work. This will help minimise claims for unlawful deduction of wages where employees' mandatory exclusion is deemed necessary to protect the rest of the workforce, clients or customers. If Tamiflu tablets are provided by the employer, it is important to ensure that employees sign waiver and release forms and obtain medical advice from their GPs prior to consumption.

A key element of effective crisis management lies in the employer's communication strategy. Employers should keep employees well informed of the risks where they live and in business-travel and holiday destinations. Briefing sessions to create awareness of swine flu and how to combat risks of infection outside and within the workplace are also advisable. Some employers are already making contingencies for anti-bacterial gel dispensers to be made available and are advising all staff to wash their hands with this gel whenever they arrive at the office and before eating, to prevent the spread of the virus.

So far, the use of masks to prevent swine flu infection has not caught on in this country. Masks can act as a physical barrier but to be effective, they need to be properly worn to cover the mouth and nose. A filtering facemask will provide an effective barrier to contamination through droplets and fine aerosols whereas a surgical mask does not offer the same level of protection. Responsibility to provide advice on the use of masks rests with the employer under health and safety laws although the supply of masks to employees will depend on the outcome of risk assessments for those employees. The HSE recommends the use of masks only where it is reasonably foreseeable that workers may come into close contact with symptomatic members of the public in the course of their duties.

“Employers who plan in advance will be better equipped to respond to the challenges ahead.”

Managing infections at work – the HR dimension

If there is a swine flu outbreak, HR will need to manage sickness absence and staffing strengths. Different operating plans should be put in place depending on the severity of the outbreak.

The practical options are:

- advise employees to stay at home if they are sick with flu-like symptoms and have good reason to believe that they may have been exposed to the swine flu virus;
- suspend employees on full pay on health and safety grounds, particularly in cases where they are suspected of having had contact with an infected colleague, guest or customer;
- apply your sickness payment policy to those who are infected – however, where company sick pay is discretionary, you can potentially take into account whether the employee deliberately travelled to a high-risk area against clear advice from the Foreign and Commonwealth Office;
- ensure that all employees comply with good personal hygiene measures e.g. use a disposable tissue to control coughs/sneezes, dispose of it appropriately and wash their hands before eating, drinking etc.
- ask employees reporting for work to bring their own food to minimise exposure with the wider public;
- deal sensitively with employees' requests for time off to care for dependants who have been infected or due to problems with nurseries;
- deal sensitively with employees' requests for annual leave and bereavement leave;
- consider whether allowing colleagues to work from home is appropriate and provide appropriate technological support to facilitate remote working;
- reduce face to face business meetings where possible and opt for video or telephone conferencing;
- cluster employees in accordance with their shifts or designated working groups to minimise the spread of the virus – if a member of staff within a cluster is infected, the damage will be contained and therefore the impact of the infection on the rest of the workforce will be diluted;
- consider use of agency workers to supplement a reduced workforce;
- publicise the government's advice on basic precautions on the intranet or in posters or booklets to discharge the organisation's health and safety obligations.



If employees have genuine health and safety concerns and refuse to report for work until the outbreak has subsided, they are protected from detriment and unfair dismissal (s44 and s100 of the Employment Rights Act (ERA) 1996). The risks associated with disciplining employees for insubordination or absence without authorised leave therefore need to be carefully assessed.

Temporary closures

Where a serious outbreak leads to reduced business or temporary business closures, there would be further pressures on HR to reduce employment-related costs. The options open to employers in that event are:

- implement lay-offs or short-time working;
- ask employees to take paid annual leave;
- ask employees to take unpaid leave to avoid a redundancy situation;
- implement a compulsory redundancy programme fairly and sensitively; or
- invoke frustration of contract due to an unforeseen event which renders future performance of the contract impossible or radically different to what was originally contemplated between the parties.

Employees can only be laid off or put on short-time working if there is an express contractual right to do so. In the absence of a contractual right, the other way to implement a lay-off or short-time working programme is through consensual agreement with the workforce. If employers have an agreed crisis-management policy in place following employee consultation to deal with such eventualities, this will help to ensure that their employees buy in to the process. This is, however, only an interim solution, as employees with more than two years of continuous service who have been laid off or put on short-time working for four consecutive weeks or six weeks over a 13-week period can claim statutory redundancy pay (s148 ERA 1996).

Employers who plan in advance will be better equipped to respond to the challenges ahead. Please contact **Julian Yew** at jjew@wedlakebell.com if you require any advice or assistance.



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