

Forthcoming employment legislation hoteliers and restaurateurs should be aware of

From 1 October 2009

Tips and service charges from guests and customers

Employers will no longer be able to use tips to top up staff pay in order to meet the national minimum wage when the National Minimum Wage legislation is amended. Service charges and gratuities processed through the payroll can no longer count towards their obligation to pay employees the minimum wage. It remains to be seen if the added costs to businesses will be passed onto customers as a result of the new laws.

New rates for national minimum wage

The National Minimum Wage Regulations 1999 (Amendment) Regulations 2009 come into force increasing the rate of the national minimum wage. The main rate rises from £5.73 per hour to £5.80 per hour and the development rate from £4.77 per hour to £4.83 per hour. The rate for workers aged 16 to 17 years increases from £3.53 to £3.57 per hour. The Regulations also increase the day value of the accommodation amount that can be taken into account where an employer provides an employee with accommodation from £4.46 to £4.51. The latter will be relevant to publicans who provide service accommodation to their employees and who would therefore be able to reduce their minimum rate of pay. Budgets should be reviewed to accommodate the increase in wage rates.

New rates of pay for redundancy

The Work and Families (Increase of Maximum Amount) Order 2009 comes into force increasing the maximum weekly amount from £350 to £380 that can be used by employment tribunals to calculate awards such as unfair dismissal and redundancy payments. As a result of this early increase, there will be no increase in February 2010.

New fees for processing personal data

The Data Protection (Notification and Notification Fees) (Amendment) Regulations 2009 come into force and amend the fee that must be paid by a data controller to register with the Information Commissioner. A data controller must be included on the register of data controllers maintained by the Information Commissioner in order to process personal data and pays a registration fee. The flat fee is being replaced by a two-tiered structure. Tier 2 employers will be required to pay £500.

This includes employers who are not a charity or small occupational pension scheme and have a turnover of £25.9 million or more for the data controller's financial year and 250 or more members of staff. Tier 1 employers pay a lower fee of £35. A data controller is in tier 1 if it is not in tier 2. Large operators may be affected by new fees.

From 12 October 2009

Employing people to work with children and vulnerable adults

The Safeguarding Vulnerable Groups Act 2006 introduced a centralised vetting system for people banned from working with children and vulnerable adults. Under the Vetting & Barring Scheme (VBS), employers will be able to make checks online, with information updated straight away when any individual is added to the list. Employers will be informed by the Independent Safeguarding Authority (ISA) if an individual becomes barred. There will be fines of up to £5,000 for employers that knowingly employ individuals on the list or fail to make the relevant checks. From October 2009, it will become a crime for a barred individual to seek or undertake work with vulnerable groups; and for employers to knowingly take them on. From 26 July 2010 all new entrants to roles working with vulnerable groups will be able to register with the VBS. The legal requirement for employees to register with the VBS and for employers to check their status will come into force in November 2010. Recruitment processes should be audited accordingly.

Pre-employment vetting

The Police Act 1997 (Criminal Records) (No. 2) Regulations 2009 come into force amending the purposes for which an application for an enhanced criminal records certificate can be made. This is to enable certificates to be sought for individuals undertaking regulated activities involving regular contact with children or vulnerable adults under the VBS.

From April 2010

Introduction of "fit to work" notes

The Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) Amendment Regulations 2010 come into force replacing the current "sick note" approach with a "fit note" system. They change the format of the medical statement to allow doctors to record whether a

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patient is “fit” or “not fit” for work or “maybe fit for some work now”. Employers will then be asked to consider a phased return to work, altered hours, amended duties or workplace adaptations accordingly. The Regulations update the rules relating to completing statements; remove forms med 4 and 5 to simplify the process for GPs and employers; and permit GPs to issue statements printed by their practice’s computer systems as opposed to handwriting on a statement pad. The changes are part of a drive to help more people to stay in work rather than succumbing to long-term absence and are expected to save the UK economy £365 million over the next 10 ten years.

Number of years’ contribution required to achieve a full basic state pension reduced

The number of years’ contribution required to achieve a full basic state pension reduces to 30 years for both men and women.

The Equality Bill – expected to be in force in Autumn 2010

The Bill when it becomes law will repeal almost all the existing discrimination statutes outlawing discrimination on grounds of sex, race, disability, religion or belief, sexual orientation and age and harmonise those provisions to a single Act. Each of the strands is now called a “protected characteristic”. Employees can claim direct discrimination if they are treated differently “because of” instead of “on the grounds of” a protected characteristic. The wide definition of direct discrimination covers both associative and perceived discrimination. Employees are also protected from harassment if the conduct complained of is “related to” a protected characteristic. There is a new definition of discrimination arising from disability, and a new right to claim indirect disability discrimination – both are subject to an objective test of justification. Pregnancy and maternity discrimination will be defined as treating a pregnant woman or ‘a woman on maternity leave “less favourably than is reasonable”. Employees can victimisation as a freestanding head of claim dependent on whether the employee has been-subjected to a detriment rather than on their comparative treatment. It will be unlawful victimisation to subject an employee to a detriment because they have or had discussions with a work colleague about possible discrimination in pay. Pay secrecy clauses in contracts will be unenforceable. Employers will be able to positively discriminate in favour of “as qualified” members of a protected group where they are under-represented or otherwise placed at a disadvantage. Liability for third-party harassment (e.g. by hotel guests, suppliers and contractors) which is currently restricted to sex discrimination only will extended to the other strands. Employees will be expressly made personally liable for acts of discrimination they commit in circumstances where the employer is also potentially liable. Employment tribunals will be empowered to make a recommendation to an employer who has lost a

discrimination case to take steps that will affect the entire workforce. The prohibition of discrimination in access to goods, facilities and services will be extended to age discrimination.

Anticipated changes in the future – dates to be confirmed by the Government

Right to request time off for training

A right to request time off to undertake training, modelled on the right to request flexible working will be introduced. Employers will be obliged to consider seriously requests that they receive, but will be able to refuse a request where there is a good business reason for doing so. Employers will not be obliged to meet the salary or training costs to enable a request for time off to train to be met.

Extension of right to time off for public duties

The right to time off for employees serving in a wider range of civic roles is extended. It is proposed that the right to time off for public duties under s.50 of the Employment Rights Act 1996 should be extended to cover roles such as members of probation boards; members of court boards; and youth offender panel members. It is also proposed that roles in the housing sector, such as board members of registered social landlords and tenant management organisations, should be covered by time off entitlements.

Extension of maternity pay to 12 months

The Government intends to extend paid maternity leave to 12 months. This follows an extension to nine months from April 2007.

Extension of Paternity leave and pay

The Government intends to allow fathers to benefit from up to 26 weeks’ paid additional paternity leave if the mother of the child returns to work before the end of the maternity leave period.

Please contact **Julian Yew, Head of the Hotel and Leisure Group**, for further details.
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