

## SPRING 2010

Welcome to our Spring 2010 update, designed to keep you informed of forthcoming changes to legislation and update you on us. We are intending to bring these updates to you quarterly.

### *References – The Legal Position*

We are often asked if it is illegal for an employer to avoid giving a reference, and of the risks that may arise when providing references.

The answer is that there is no detailed legislation that is specifically designed to deal with providing references to employees in all occupations. An employer does not have a common law duty to provide references for a current or past employee unless there is an express or implied contractual term to that effect in the employment contract. In practice, it is rare for an employer to refuse. It is normally and established practice to provide a reference and refusal to do so, could result in adverse consequences for the employee. When considering whether or not to provide a reference, the following legislation is relevant:

- The Financial Services and Markets Act 2000 Act applies to the provision of references, and employers that provide financial services governed by this Act are bound to supply references.
- The Data Protection Act 1998 may also apply, particularly in respect of the processing of information when providing of a reference.
- The Unfair Contract Terms Act 1977 may apply to attempts to disclaim liability for a reference.

An employer may be liable if the employee suffers a loss as a result of the employer's failure to exercise reasonable care in the preparation of a reference. The reference must not give an unfair or misleading impression overall. If a reference contains a false or unsubstantiated statement that damages the reputation of a former employee, he or she may be able to claim some damages for defamation. However, the risk is slight, since there is no liability for libel if the employer believes the information in the reference is correct and given without malice.

Under the Data Protection Act 1998, if an employer provides a confidential reference to a prospective new employer, the employer is permitted to refuse to disclose that reference to the employee if he or she requests to see it.

However, where the request to see the reference is made by the employee to the recipient of the reference, the prospective employer, the provisions in the Data Protection Act 1998 are more complicated. Section 7 provides that the prospective employer is not obliged to comply with the employee's request unless either the author of the reference has consented to its disclosure.

## *Did you know?*

2009 saw an astonishing increase in serious fraud within the workplace, resulting in losses totalling £567 million, compared to losses of £228million in 2008 and £81 million in 2007. These figures are as a result of weak security checks and the pressure of the recession.

Over the last 12 months, there has been a 50% increase in candidates with undisclosed bankruptcies and CCJs.

An estimated 20% of the population has a criminal record.

Are you effectively screening your staff, both pre employment and during employment? Contact us to discuss your policies and procedures, and for a competitive quote from our screening partners.

## *Update on Objective HR*

### **Objective HR becomes Business Partner to Institute of Customer Services**

Objective HR has just become a Business Partner and Associate Member to the widely-respected Institute of Customer Services.

Objective HR, which has seen rapid growth in the past year, has now been accredited by the ICS to deliver its customer service training programmes. With more than 7,000 members, the ICS is committed to raising the standards for customer service, promoting world-class service through research and recognition. Lisa Collins, Director of Objective HR, says, "We're delighted to partner with the ICS. It's a wonderful opportunity for us to work alongside this forward-thinking institution and help to develop customer service standards."

What does membership mean for the company? "As a business partner, we're now accredited to deliver the ICS Service Focus training programmes. First Impressions, at

the foundation level, is the first step to demonstrating professional customer service. There's also ICS Service Management, aimed at customer service team leaders and managers." For more information, please contact [info@objectivehr.com](mailto:info@objectivehr.com)



Bob Winnington, Account Director of Institute of Customer Services, presents our membership plaque.

## *Forthcoming Changes to Legislation*

**6 April 2010**

### Right to request time off for training is introduced

A right to request time off to undertake study or training, is introduced for employees in organisations with 250 or more employees. This is modelled on the legislation relating to right to request flexible working, 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 pay salary or fund the cost of training to enable a request for time off to train to be met.

This legislation applies to employees in organisations with 250 or more employees from April 2010 and will be extended to cover all employees from April 2011 at the earliest.

The Regulations prescribe that where an employer does not comply with the procedural requirements, the maximum amount of compensation that may be awarded is eight weeks' pay.

**6 April 2010**

### Additional Paternity Leave and Pay Introduced

In September 2009, the Government confirmed that it intends to continue with plans that will allow fathers to benefit from up to six months' additional paternity leave. This right will be available if the mother returns to work before using her full entitlement to statutory maternity leave. The new right will be available to parents of children due on or after 3 April 2011.

The weekly rate of payment of additional statutory paternity pay is the lesser of £124.88 and 90% of the employee's normal weekly earnings.

**6 April 2010**

### Normal Minimum Pension age rises to 55

The minimum age at which people can start to receive pension payments from an occupational or personal pension scheme, rises from age 50 to age 55. There are some exceptions, which include where the scheme member has a protected pension age or severe health problems.

**6 April 2010**

### 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 males and females.

**6 April 2010**

### Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) Amendment Regulations 2010

The Regulations change the format of the medical statement and the rules associated with its completion. Doctors will be able to indicate whether their patient is unfit for work or may be able to work with appropriate support if available.

The basic law around absence has not changed. Employees are still required to produce medical evidence to support their absence.

For further information in relation to fit notes, or to view a sample fit note, please click on the following links:

<http://www.dwp.gov.uk/docs/fitnote-employerguide.pdf>

<http://www.dwp.gov.uk/docs/mcd3-fitnotesample.pdf>

### *Tell us what you think . . .*

Are there any specific topics that you would like us to cover in the future? Or would you like to ask a question about a specific issue that you would like published? If so, please email [info@objectivehr.com](mailto:info@objectivehr.com) . All feedback is welcomed.

### *Need help?*

Are your current resources stretched, or do you need help with a specific project? Objective HR has a pool of talented, experienced HR and Learning and Development associates that you help you. Our recent assignments have included:

- Design of a remuneration strategy, including benchmarking against competitors;
- Design and delivery of learning interventions, including train the trainer, letter writing, FSA regulated training;
- Review, recommendation and implementation of revised policies, procedures and terms of business;
- Management of a Senior level recruitment programme, comprising CEO, COO, CTO & CFO;
- Outplacement support at Director level;
- Proposal and implementation of HR strategy for 2 insurance start-up companies.

### *Contact us:*

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