

e-bulletin

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Welcome to the December 2009 edition of our Employment E-news Update.

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If the [Employment Team](#) can assist you with any employment issues then please do not hesitate to contact us.

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Welcome To Morton Fraser's Employment Blog

To coincide with the launch of Morton Fraser's new website, Innes Clark has started an employment [blog](#). The blog will provide regular updates and commentary on topical employment law and HR related issues. Recent topics have included:-

- [Policeman With Belief in Psychic Loses Tribunal Claim](#)
- [Pre-employment Medical Questionnaires](#)
- [Family Friendly Rights to be Extended](#)
- [Employment Aspects - Queen's Speech](#)
- [Can New Schemes Prevent Tragedies?](#)
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Please feel free to comment on the blog posts or to provide any suggestions for topics you would like to see covered.

Missed Our Equality Bill Seminars? - Don't Worry

Innes Clark, Head of the Employment Team, hosted two events this month on the Equality Bill which is due to receive Royal Assent in Spring next year. Don't worry if you missed the events, click on the links below for the slides and the notes:-

- [Equality Bill Slides](#)
- [Equality Bill Notes](#)

Volunteers Not Covered By Disability Discrimination Act

A recent case from the Employment Appeal Tribunal has concluded that volunteers, such as those working in the Citizens' Advice Bureau (CAB) or charity shops, are not covered by the Disability Discrimination Act (DDA) or the European Union Framework Directive.

The Claimant in [X v Mid-Sussex CAB](#) worked part-time as an advisor for the CAB. There was no contract of employment in place. She left under a cloud and alleged discrimination due to her disability. She claimed that the EU Directive should take effect by way of the DDA.

The Tribunal held that there needs to be a material contract in place in order to gain protection under the Directive and there was no precedent to suggest that occupation was defined as unpaid employment. The Judge also noted that it was not the intention of the Directive to protect volunteers so there was no need to make a referral to the European Court of Justice on this point.

Disability Discrimination Reasonable Adjustments

Section 4A (3) of the Disability Discrimination Act 1995 was the subject of a recent decision from the Employment Appeal Tribunal. [DWP V Alam](#) held that it was necessary for the following 2 questions to be addressed when deciding if the employer has breached its obligation to make reasonable adjustments:

Firstly, was the employer aware of the employee's disability and that it was likely to affect the employee as laid out in terms of s. 4A(1); Secondly, if this was not the case should the employer have known?

The employer can therefore escape liability if they can answer both questions in the negative.

Does Shouting At Your Boss Reduce The Risk Of Heart Attacks?

A study carried out by Swedish researchers at the University of Stockholm has discovered that those who bottle up their anger are more likely to suffer from ill health.

It is thought that those of us who suffer in silence as opposed to venting our anger are more likely to suffer high blood pressure, heart attacks, or die of heart disease.

The study followed a group of 2,755 male workers over a period of 13 years. Various measurements were taken such as blood pressure, BMI, and cholesterol levels. The men were also asked what methods they used to cope with stress at work.

Over the period of the study, 47 men died from heart disease or heart attacks. Researchers took into account: the type of work carried out by these men; the pressures of the job; and the men's coping mechanisms. They found that those men who bottled up their anger were twice as likely to suffer from heart attacks or heart disease.

So should we shout at the boss?

Constanze Leineweber, of the Stress Research Institute at Stockholm University, who led the study, said: "I would not advise shouting at the boss. That is not the best solution. But it is always better to say you feel unfairly treated and to find constructive solutions to it. We found an increase in risk among those who did not talk to the boss. There must be ways of reducing the risk."

She added: "Of course it would be best to have a work environment where there are no conflicts but that isn't always possible."

The result? Venting your anger may be good for your health, but the study says nothing on the impact it may have on your career prospects!

Strong Views On Climate Change Amount To A Philosophical Belief

In [Grainger Plc v Nicholson](#) the Employment Appeal Tribunal has held that strong views on climate change amount to a philosophical belief under the Employment Equality (Religion or Belief) Regulations 2003.

The Judge said "If a person can establish that he holds a philosophical belief based on science as opposed, for example, to religion, then there is no reason to disqualify it from protection."

Many commentators have expressed concern that this will open the floodgates to new types of discrimination claims including, for example, protection for extreme political views. In an interview for the Scotsman on this case Innes Clark pointed out that the judgement set out significant limitations on the interpretation of belief, noting "It is unlikely that those following the belief of the Jedi Knights would be able to use this sort of argument if they suffered discrimination in the workplace as a result of their belief. However what is less certain is the issue of strongly held political beliefs and it is likely that, at some point, we will see arguments that certain strongly held views could now be protected as a philosophical belief."

"Vegetarianism is another example referred to in the judgement, and again, it is possible that this sort of belief could be argued as being protected in certain circumstances at some point in the future."

Employers must now tread even more carefully than before. If you believe this judgment could be relevant in respect of one of your employees and would like advice on how to deal with any potential issue, please contact us.

Jurisdiction Issues

The Court of Appeal has handed down its decision in [Diggins v Condor Marine](#). In this case Mr Diggins was a seaman employed to work on a ship which traded between the Channel Islands and Portsmouth. The vessel was, however, registered in Nassua.

Condor Marine argued that the Employment Tribunal did not have jurisdiction to hear the complaint of Mr Diggins. The Court of Appeal held that the Tribunal did have jurisdiction to hear the complaint. The question is not where the employer is based, but where the Employee is based when his duty begins and when his duty ends which, in this case, was thoroughly within the Tribunal's jurisdiction.

Director's Service Addresses

Under the Companies Act 1985, all companies were required to file the usual residential address of all their directors and secretaries with Companies House. These addresses formed part of the register which had to be made publicly available. From 1 October 2009, directors have been able to use a "service address" which is different from their home address for the purposes of the public record. The service address will be available to the public, but the residential address will be included on a secure register to which access will be restricted. The service address can be any address, provided it is possible to physically serve documents and, where required, to acknowledge delivery. Company secretaries are no longer required to file a residential address.

If you have any questions regarding the use of a service address or would like to use our service address facility, please contact our company secretary Isla Reid on [0131 247 1255](tel:01312471255) or email Isla at isla.reid@morton-fraser.com.

Employment Protection Package

We have launched an Employment Protection Package for employers to provide a comprehensive solution to employment law issues. The Employment Protection Package includes:-

- Annual employment documentation health check
- 24 hour access to employment law advice
- Tribunal awards insurance cover of up to £250,000 including legal costs
- Affordable monthly fixed fee payments

Click here for further details or for a free quote:- [Employment Protection Package](#)

Christmas - The Unwanted Present For Employers?

With Christmas fast approaching and the office party season about to get into full swing we have prepared an article setting out some points that employers should consider to ensure a trouble (and Tribunal) free Christmas. Click [here](#) to view the article - Christmas - The Unwanted Present For Employers?