

Special points of interest:

- Default Retirement Age: The Knock-On Effects
- Flexible Working Update
- H&S Matters
- Employment Law: The Bribery Act

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SME HR Newsletter Spring 2011

Red Tape is Stifling SMEs

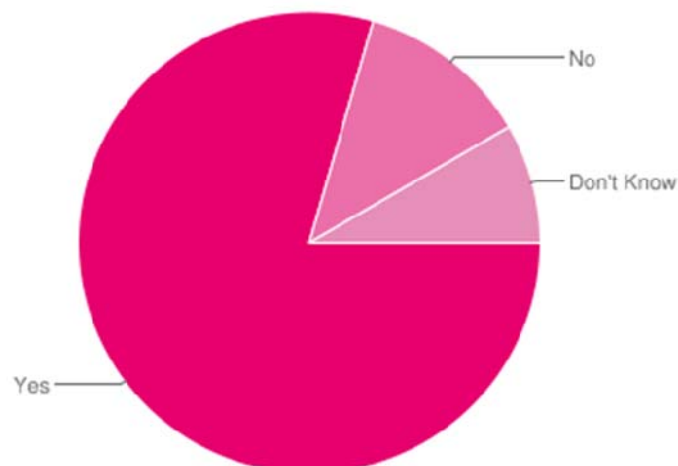


Recently the Prime Minister blasted the civil service for loading costs and red tape regulations onto businesses. Touch Local carried out a poll amongst a sample of UK SMEs to find out if small business owners believed that red tape regulations are holding back growth for SMEs.

The Survey

As a small business owner, do you believe red tape regulations are holding back growth for SME's?

The Results



Yes: 646 (80%)
No: 99 (12%)
Don't Know: 68 (8%)
Total responses: 811

Summary

More than three quarters of small business respondents (80%) agree with the Prime Minister's belief that businesses suffering from red tape regulations 'frankly cannot take it any more'. The majority of these believe that the administrative cost and time spent on red tape is stifling the growth of their business, and fear that under the new Government things will not improve. Only 12% of small business owners do not believe that red tape is affecting the growth of SME's. Of these, many note other legislations that are having a

detrimental effect on small businesses, whilst others indicate that some industries such as banking rely heavily on red tape. 8% of respondents did not know whether red tape is affecting small businesses.

Some of the comments from respondents:

You deal with more red tape than doing business.

I'm too scared to employ anyone - particularly women who may get pregnant. As a woman myself I am horrified by my response, but paying maternity leave could bankrupt my company. And employment law is such that it could destroy my company. SMEs rarely have the manpower or in house knowledge to trawl through legislation.

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Banks pledge £76 billion available to lend SMEs in 2011

Robin Bowman, Premierline Direct

UK banks have agreed to increase the amount of lending available to all business to £190 billion in 2011 - up from £179 billion of actual lending last year.

Of that total, 40 per cent - so £76 billion - will be earmarked for SMEs. That equates to a 15 per cent increase on the £66 billion lent to SMEs in 2010.

Very importantly, the banks have also agreed that lending to SMEs will form part of the performance assessments for each bank's chief executive and of senior managers responsible for business lending.

On top of this, there will be further money - an extra £1.2 billion - to support regional growth. Of this, the banks will provide £200m of capital over two years to set up the Big Society Bank.

The remaining £1 billion will be used for potentially high-growth SME start-ups, and to make it easier for these businesses to get access to funding. The money will support SME growth in the regions through a network of regional offices through the government's Business Growth Fund, announced last year.

But, as is so often the

case, there are Buts...

This lending will still very much be on what the banks consider to be commercial terms - in other words, while this amount of money is to be made available, there is nothing to say the banks

Federation of Small Businesses revealed, around 84 per cent of small businesses are not approaching banks for credit, either because they have already been refused or because the cost is too high.



have to actually lend it; and, most importantly, the banks can charge what they like to lend it.

For most smaller businesses it is the charges banks insist on levying rather than the availability of money that is the real problem.

Businesses will still need to qualify for loans and the standard of qualification is still for the banks to decide; they can set the bar as high as they like. Many micro firms and start-ups simply don't look good enough lending prospects to the banks for them to advance loans on anything like workable terms.

As a recent survey by the

So, in short, we'll have to wait and see whether the agreement really will mean a great many more established SMEs and start-ups get access to the finance - and that means affordable finance.

“For most smaller businesses it is the charges banks insist on levying rather than the availability of money that is the real problem.”

Employment Law: The abolition of the default retirement age will have several knock-on effects for employers. Including:



Contractual retirement age

Age discrimination and unfair dismissal claims designed to "test" whether or not an employer's decision to impose a contractual retirement age is justified. Age discrimination claims from older employees who are approaching or have reached the old retirement age and who are being performance managed.

Age discrimination claims designed to "test" contractual or discretionary redundancy policies that continue to apply a taper or cap to the payments received by older employees.

Difficulty in being able to justify a particular age for retirement.

The need for employers to tackle underperformance and health issues head on with a greater risk of conflict with employees.

Difficulties in undertaking succession planning.

Additional expense when offering some benefits to all staff due to rising insurance premiums.

Cutting benefits to employees aged 65 and over

Employees kept on after the age of 65 are able to claim age discrimination if their benefits are less favourable than those of other age groups. Insured medical benefits tend to be more expensive to provide for those who are older.

Retirement through compromise agreements

Once the Default Retirement Age (DRA) is abolished, employers could choose to force employees to retire and ask them to sign compromise agreements waiving unfair dismissal and age discrimination claims. There is ongoing uncertainty about whether compromise agreements can be used to compromise claims under the Equality Act 2010, because of the way in which the relevant section has been drafted.

Employers will be wary of using such agreements and affected employees may demand "relatively substantial compensation". Employers should ensure that any agreement is "without prejudice", meaning that the parties agree not to use the agreement as evidence in a later legal claim.

If the conversation [on a compromise agreement] is not without prejudice, the employee might be able to rely on it in a subsequent claim as evidence that the dismissal was discriminatory and unfair.

Dismissals on the grounds of incapacity/lack of capability

The DRA gave employers a way to show workers near retirement the door if their performance fell below par. "Once the DRA goes, that option will no longer be available and employers will have to manage underperformance or ill health for older members of the workforce in

exactly the same way as they would for a younger employee.

Consistency of treatment will be especially important. There should be clear evidence of why the employer is taking action, to avoid any suggestion that it is simply because of the employee's age. If underperforming or ill older employees are treated differently to younger colleagues, they will have **a strong case to pursue an age discrimination claim.**

Dealing with age-related disabilities

An employer would notionally have the same obligation to make adjustments for an employee who was, say, 66 who faced a disability as they would for an employee who was 46 with the same disability. The only factor which might affect the extent of the adjustment would be the cost of the adjustment having regard to the period the employee might reasonably continue in employment.



This is likely to be an area for dispute with employees going forward.

Continued on Page 4...

Employment Law: Retirement Age Continued...

Handling performance management issues

As in any case of underperformance, employers must clearly document their concerns. Employees should be counselled on what is required of them; they should be given time to improve and be provided with the relevant support and coaching. This process can take time and require a series of letters, meetings and warnings. Only once reasonable efforts to improve an employee's performance have failed should an employer consider dismissing an employee.

Retiring an employee aged 65 and over for declining performance

An employer should be tackling performance or health issues in relation to older workers in exactly the same way as it would for younger workers. If an employer wishes to seek to persuade an employee to retire,

then it needs to be prepared to consider offering some sort of termination package under the terms of a compromise agreement, in order to 'buy off' the risk of unfair dismissal and age discrimination claims."

Calculating redundancy payments for those aged 65 and over

Statutory redundancy pay calculations for those 65 or over are not affected by the abolition of the DRA. However, Employers with a written contractual redundancy policy should ensure that these policies are reviewed to ensure that they are not discriminatory."

Excluding those aged 65 and over from training/development programmes

When offering training opportunities, employers will need to consider how long an employee will have to



remain in employment before the business will benefit from the training that has been provided. This may make it more difficult to argue that the employer was justified in not offering the training to its older employees.

Equal opportunities policies

Equal opportunities policies and other documentation such as contracts of employment should be changed once employers decide whether or not they will manage without a retirement age or if they will rely on a contractual retirement age.

Employment Law: The Bribery Act

This Act will come into force in April 2011 and introduces four new offences: making a bribe, accepting a bribe, bribery of a foreign public official and failing to prevent a bribe.

In order to protect your business and refute allegations of failing to prevent a bribe, you should have procedures in place to prevent bribery. This could include the appointment of an individual responsible for such issues, drafting a code of conduct and carrying out a risk assessment. In addition, employees should receive training on the new legislation

and be encouraged to report suspicions of bribery by colleagues without fear of sanctions against them. Individuals can be subject to a maximum penalty of 10 years imprisonment and an unlimited fine and as an employer you can face an unlimited fine. You should be particularly aware of corporate hospitality where it might be construed that the recipient was being encouraged to act in an improper way, in order to gain beneficial contracts, etc.



Health and Safety

Case Studies from London 2012 - HSE is shortly publishing a series of short case studies to promote some of the new and practical solutions used to manage health, safety and welfare during construction of the London 2012 projects.

Proposed amendment to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR)

This consultation sets out the amendment to regulation 3(2) of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) proposed by Lord Young in his report "Common Sense, Common Safety". If adopted, the period of incapacitation after which an injury to a person at work must be reported to the enforcing authority, will change from over three to over seven days. It seeks views on the proposal itself and on the impacts that it would have if it became law.

Prosecution Round Up:

Site Manager sentenced after worker exposed to asbestos - March 2011

A construction site manager from Barry has been sentenced after directing a bricklayer to demolish a wall that contained asbestos, which put him at serious risk.

Section 7(a) of Health and Safety at Work etc. Act states 'it shall be the duty of every employee to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work;

Roofing company fined for unsafe work - March 2011

A Surrey roofing company has been fined after two workers were spotted working on a roof almost 30 feet high without using any safety equipment.

The Health and Safety Executive (HSE) prosecuted BRC Industrial Roofing Specialists Ltd and its managing director, Lee Berbridge, after an inspector saw the men while driving past the scene.

Crawley Magistrates' Court heard BRC had been contracted to 'oversheet' a roof at Independent Business Park in East Grinstead.

On 5 January this year, HSE Inspector Russell Beckett was driving past the site when he saw two BRC employees standing on an asbestos roof.

The men had no means to stop them falling from the eight and a half metre

fragile roof and nothing to break their fall if they had tripped over the edge or fell through the roof.

Though they had been issued with lightweight staging boards, they were not using these to walk on as intended, and one man was spotted walking on the metal grid while the other was standing on the asbestos.



The inspector was so alarmed at what he saw that he issued a Prohibition Notice stopping any further work immediately. An Improvement Notice was then issued to ensure a risk assessment and correct procedures were in place before work could commence again.

On every previous visit to the firm the HSE issued Prohibition Notices for similar matters.

The HSE investigation showed that work was not properly planned or appropriately supervised and it was not carried out in a manner that was reasonably safe.

HSE's Inspector Russell Beckett said:

"Working on roofs is a high-risk activity. Nearly a quarter of all roofers are killed in falls from height. Falls through fragile materials, such as rooflights and asbestos cement roofing sheets, account for more of these deaths than anything else.

"Employees who work on fragile roofs without the right equipment risk not knowing if their next step could be their last. It is sheer luck that in this case the two men were not severely injured or killed."

BRC Industrial Roofing Specialists Limited of Kings Yard, Kings Road, Long Ditton Surrey, pleaded guilty to Regulation 4 of the Work at Height Regulations 2005.

The company's managing director, Lee Berbridge, of the same address, pleaded guilty to Regulation 4 of the Work at Height Regulations 2005.

Regulation 4 of the Work at Height Regulations 2005 states: "Every employer shall ensure that work at height is properly planned, appropriately supervised and carried out in a manner which is, so far as is reasonably practicable, safe."

Section 37(1) of the Health and Safety at Work etc Act 1974 states: "Where an offence under any of the relevant statutory provisions committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Advertising Standards Authority (ASA) now regulates web content

From 1 March the ASA have taken responsibility for regulating web content. This applies to web sites, blogs, promotional videos and adverts. **It will also apply to social media such as twitter or facebook where the business is using these to promote goods or services.**

In all of these the ASA will be looking for content to be "legal, decent and honest". This will include the need for statistical data to be properly referenced and claims such as performance will need to be qualified.



Flexible working rights – what's new?

From April 2011 the right to request flexible working is extended to parents of all children under 18. Previously the right to request flexible working was restricted to parents of children under 17 or 18 where the child was disabled.

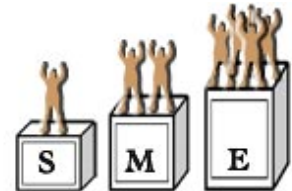


Changes in flexible working legislation

A new consultation is likely to extend this right to all employees within the next year or so. As such, you may want to consider offering flexible working rights to all your employees now. Flexible working can benefit the organisation as well as its people if it is implemented and managed properly.

There are several more key employment law changes in April 2011 contact us for more details.....

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