

Articles in this edition

Robert Jarvis discusses the latest HR Issues

The September edition of the Executive Director Survey has been published

Update on EMI's from Ian Murphie

The Companies Act 2006

Latest MM & K News

Mike Landon joins MM & K from Mercers

Mike has more than 20 years of experience of advising companies on remuneration issues, specialising in executive compensation and share plans. His work has included the design and implementation of a considerable variety of executive and all-employee share incentive arrangements, including tax-favoured "approved" plans, international plans, LTIPs and other cash incentives. He has previously worked at Mercer, PricewaterhouseCoopers and Watson Wyatt.

MM & K has appointed Ian Murphie

Ian left independent legal practice in 2000 and has since then specialised in advising both quoted and unquoted companies on the design and implementation of employee share schemes. With experience gained initially as head of legal services at a specialist set of share scheme advisors, and then as share scheme manager and director at two top 10 audit and accountancy firms. Ian joined MM&K in October 2009 on its acquisition of Ian's share scheme consultancy, SharePlanSolutions. Ian now heads the share plan design and administration teams within the group.

Topical HR Issues

There have been three recent developments in the field of HR that may impact your organisation:

1) Sickness Whilst on Leave

The European Court of Justice ("ECJ") has ruled that:

- employees who are ill for all or part of their annual leave can re-classify this time as sick leave and re-claim their holiday 'spoilt' by illness;
- employees should be allowed to postpone leave if they fall ill before the holiday period.

The ruling (which follows the famous Stringer case earlier in the year which concluded that holiday entitlement continues to accrue whilst on long term sick leave, even if it rolls over into the next year) aims to ensure that employees are not deprived of their entitlement to rest and relaxation. The ECJ provide no guidance on the steps employees must take to prove any illness, as doctors' certificates are generally only required after 7 days and employees can self certificate up to 7 days.

Many UK employers are concerned that this will give rise to so-minded individuals to extend their leave entitlement.

Some general advice until the ECJ offers any guidance:

- Seek evidence of illness (this may include a sick note produced abroad);
- Amend sickness reporting procedures to make them clear on the requirement for compliance with notification procedures even when abroad;
- Also consider whether the nature of the illness being reported would have rendered the employee unable to work if not on holiday before considering the reallocation of holiday allowance;
- Be consistent between individuals.

2) 65 Default Retirement Age Valid

On the 25th September 2009 the High Court ruled that it is appropriate for UK employers to continue to retire employees at the age of 65. The 'Heyday case' had been referred back to the High Court in March 2009. The judgement by Mr Justice Blake stated that the default retirement age does comply with the European Equal Treatment Directive. He described the default age of 65 as 'legitimate and proportionate'. He went on to say that 65 would not have been chosen as the default age had it been set today and not 2006 as part of the age discrimination law. He also stated that he could not see how the default 65 age could remain going forward, as the arguments for increasing the retirement age are 'compelling'. Essentially the ruling is indicating that a default retirement age is appropriate but perhaps 65 is not the right default age.

A recent Eversheds survey on employers' attitudes to Age Discrimination found that 73% of those asked stated that they would prefer the default age to remain at 65, whilst 8% thought an increase to 70 would be preferable. A small handful indicated a preference for 67 or 68.

The government has already announced that its review of the default retirement age is to be brought forward to 2010. UK employers and employees alike will be waiting for the outcome of this review. With the state pension age due to increase to 66 from 2024 and to 68 by 2046, there is sure to be a great deal of discussion on this topic for a long while yet!

3) Changes to Data Protection Notification Fees

The Data Protection Act 1998 places obligations on organisations that use personal information and gives individuals certain rights. Under the act every organisation (data controller) that processes personal data must notify the Information Commissioner's Office unless it is exempt (Charities, Small Occupational Pension Schemes and organisations who have been in existence for less than 1 month). Failure to notify is a criminal offence.

Since March 2000 the fee has been £35 for all data controllers. From the 1st October 2009 due to changes in legislation there will be a two tiered fee structure. Broadly speaking for employers of fewer than 250 staff the fee remains £35. However for organisations with over 250 employees and turnover over £25.9m the fee will be £500. An Employee for the purposes of this is a worker under the Trade Union and Labour Relation (Consolidation) Act 1992, an office holder or a partner.

Organisations that have a renewal date on or after 1st October 2009 are required to assess the level of notification fee. It is up to the organisation to assess their categorisation and pay the appropriate fee. This may be particularly important if your organisation pays the annual fee by direct debit.

MM & K HR Partner is able to provide further details and support on the three matters outlined above along with more general HR support.

Please contact robert.jarvis@mm-k.com should you wish to discuss this in more detail.

New Update of Executive Director Total Remuneration Survey

MM&K, in association with Manifest, the Corporate Governance and Proxy Voting Agency, has published the latest Executive Director Survey.

The survey received much press coverage including The Economist ([click here for link](#)), Financial Times ([click here](#)) and Bloomberg online ([click here](#))

The reason for this coverage is the accuracy, comprehensiveness and easy to understand presentation combined with historic data going back over 10 years.

To order your copy please telephone Alex Goodrich on 020 7283 7200 or buy online by clicking [here](#). Survey price is £500. Or you can buy our Chairman and Non Executive Director survey together with the Executive Director Survey for a combined price of £600 (a £100 saving).

EMI Update

Tax-approved Enterprise Management Incentive ("EMI") share option plans have proven exponentially popular with SME companies. With companies having the ability to award up to £120,000 of equity to each qualifying employee (subject to an overall company limit of

£3,000,000) and with gains potentially free of income tax and both employer and employee NIC, the loss to the exchequer in the 2007/08 tax year alone was estimated at around £240m. The European Commission has agreed that EMI does comply with the European State Aid rules with the result that it can continue until 2018.

There is further good news insofar as the current requirement that a qualifying company (or its group) must carry on a qualifying trade wholly or mainly in the UK will be relaxed under the Finance Bill 2010 so as to widen the eligibility net to include any company with a permanent establishment in the UK. That should permit some previously excluded companies to share the benefit of EMI plans with their employees under what is the most tax efficient equity incentive within the UK.

The Companies Act 2006

The Companies Act 2006 came into force in full from 1 October 2009, and the changes will affect every Company which operates in the UK and is registered at Companies House.

As a quick reminder the main areas which have been amended are:

- Companies now have 1 month less to file their statutory accounts at companies house. For a private company it is now nine months and for public company six months.
- The concept of "authorised" share capital has been abolished. There are transitional rules in place which will allow companies to amend their existing authorised share capital if they wish.
- For newly incorporated companies a new one page memorandum which states the subscribers and the shares issued takes effect. All other information is now included in the Articles of Association. Existing Memorandum & Articles of Association remain valid. However you may wish to consider amending your articles in order to bring them up to date with the latest Companies Act references.
- Any amendments to Articles of Association must now be notified to Companies House within 15 days, failure to do this could make you liable to a penalty of £200.
- A director's usual residential address lodged with Companies House can remain private (not publically available) if you provide a "nominated service address". Please note there is however a fee involved in making this amendment (for each Directorship held) and it must be for a "valid" reason.
- The requirement for an appointed Company Secretary, if you are private company, has been removed. Although you can retain the position if you wish.
- All forms which are submitted to companies house have been changed The old forms will not be accepted with effect from 1 October 2009.

For more information Companies House have provided guidance notes and they can be found on www.companieshouse.gov.uk/act