

Newsletter

Keeping our clients up-to-date



Negotiating commercial lease terms in the current market



Waiter! Waiter!
There's a hair in my soup



Holidays with children after a relationship breaks down

New regime for disciplinary and grievance procedures

The law on disciplinary, dismissal and grievance procedures changed on 6 April 2009. The statutory procedures have been repealed and from now on employers will need to comply with the new Acas Code of Practice on Disciplinary and Grievance Procedures, known as the Acas Code.

When do the changes apply?

For dismissals and disciplinary procedures the new regime applies from 6 April unless the dismissal or disciplinary action occurred before 6 April or if a Step 1 letter had been issued or Step 2 meeting had taken place before this date.

For grievances, the rules are more complex and the old regime may continue to apply depending on the date of incident that the grievance is about. You are strongly advised to speak to us before taking any action.

Which situations do the changes apply to?

The Acas Code applies only to disciplinary situations around misconduct and poor performance. It does not apply to dismissals relating to fixed-term contracts and redundancy, these are specifically excluded from the new code.

How will this affect employers?

- The amount that an award may be increased in favour of an employee for an employer's failure to follow the Acas Code is now limited to a maximum of 25% (previously 10-50%) and only applies where there has been an unreasonable failure.
- In cases where an employee fails to follow procedure, any award may now be reduced by up to 25%.



- There may be occasions where the tribunal makes no financial penalties. Under the old regime, an adjustment less than ten per cent was only permissible in exceptional circumstances. This gives the tribunal more discretion and the employer more leeway.
- There will no longer be an automatic three month extension of time limits in which to submit a claim to the tribunal: this closes the earlier window of opportunity in favour of the employee.

- The concept of automatically unfair dismissal on procedural grounds disappears completely. Only if the employee can show that there has been an unreasonable failure to observe the code will the employer be liable.
- There is no longer an explicit requirement to follow a grievance procedure for former employees.

So what do employers need to look out for?

- The transition provisions for grievance procedures are technical and specialist legal advice must be obtained to avoid falling foul of the law.
- An employee no longer has to raise a grievance before submitting a claim to the tribunal. Therefore, employers will not be on notice of a possible claim before it arises.

For employers, best practice should not change significantly and in many aspects the new regime is more employer-friendly.

However, there have been some important changes relating to tribunal hearings which employers should seek advice on and there could be some uncertainty for some time to come while the transition is made from the statutory regime to the new code.

For advice on any employment matters, contact Mary Honeyben on 01246 231 288 or Stacey Spooner on 01623 655 666 .

Fixed price probate service from Elliot Mather

Dealing with a loved one's affairs after bereavement is never easy. But if you look for help, how can you be sure that you are being charged fairly?

We at Elliot Mather Solicitors appreciate that this is a serious concern for all those left behind and have helped many people administer their loved one's estate by offering a fair and honest charging structure that provides all our customers with reassurance and peace of mind.

In the majority of cases we are able to give you a realistic price for the job at the very outset so that you know how much it is likely to cost the estate - with no hidden extras or surcharges.

Some probate companies charge a percentage of the value of the estate (called the costs uplift); this is calculated as a percentage of the value of the estate - in effect, penalising you for the size of your inheritance!

In addition to saving you money on legal costs by not making this charge, our experienced wills and probate team goes even further, to work with you to exploit any available legal opportunity to save your estate (or the survivor's estate) inheritance tax.



If you would like further information about our probate services, please contact: Fred Parkinson in Chesterfield on 01246 231 288 or Judi Wigmore in Mansfield on 01623 655 666.

Negotiating commercial lease terms in the current market

Many businesses are being affected by the current economic climate and we are continuing to see high street and other commercial premises being boarded up.

The reduction in tenant demand and the corresponding increase in empty commercial premises have resulted in a more flexible approach being adopted by landlords who need to secure tenants as soon as possible in order to avoid hefty business rates for empty premises.

Tenants will also want to adopt a more cautious approach in agreeing previously acceptable long term lease obligations so that they have the flexibility to react to changes in the market and ultimately to make commercial premises more affordable.

There are a number of mechanisms available to assist landlords and tenants in negotiating commercial lease terms in the current market, as follows:

Rent

A move away from market rent towards a turnover-based rent, which means that the rent payable under the lease will track the performance of the tenant's business.

If a landlord does agree to a turnover rent lease they run the risk that the income stream will decrease if the tenant's business becomes quiet.

Rent review

A tenant may seek a market rent review which is not upwards only. If the market rent decreased at the relevant rent review so too would the revised rent. Alternatively a lease with no reviews at all would provide certainty to the tenant who would be sure of its rent obligations throughout the lease term.

A landlord must consider the risk that if the market rises during the term of the lease it may have an effect on the income stream.

Rent free period

This has traditionally been an incentive used by landlords to attract a tenant into occupation. There has already been evidence in the market that longer rent free periods are being offered.

Interim rent

Where terms are being negotiated for a lease renewal (as opposed to a new lease), a tenant may benefit from making an application to court to pay an interim rent, pending completion of the new lease.



Where a tenant is paying rent under their existing lease which is higher than the current market rent, interim rent will generally be calculated as the rent to be agreed under a new lease, which in a falling market could be significantly less.

Break clause

An option for the tenant to end the lease on a certain date prior to the expiry of the term giving the tenant a 'get out clause'.

Schedule of condition

A tenant with a full repair covenant may be concerned that future repairs to the property will present unexpected costs later in the lease term. In order to achieve certainty, a limited repair covenant (an obligation to keep the property in the same state of repair that it was in at the beginning of the term of the lease) could be agreed.

Service charge cap

Another way to ensure that a tenant is certain of the cost of its obligations under the lease is to cap its service charge contribution throughout the lease term.

It is advisable to speak to us whenever you are negotiating lease terms and we will advise you on the best solution for your particular circumstances.

Contact Andrew Johnston in Mansfield on 01623 655 666 or Amy Dixon or Carol Parker in Chesterfield on 01246 231 288.

Waiter! Waiter! There's a hair in my soup

If only this was a joke. Every year millions of people suffer food poisoning after eating out at a restaurant, café or takeaway, or after eating supermarket food. Some people experience relatively mild symptoms, which clear up after a few days. However, some of the unlucky ones go on to suffer more prolonged symptoms of stomach cramps, diarrhoea, vomiting, paralysis and even death. Children and the elderly are particularly at risk. Common bacteria giving rise to food poisoning are salmonella, E-Coli, and listeria.

The Food Safety Act 1990 is there to protect you. Those handling food must wash their hands regularly, keep cooked meat separately from raw meat, refrigerate dairy products and use clean kitchen tools. Standards can slip especially in the busy summer months.

To suffer food poisoning, when it is at the hands of food professionals and it is not your fault, is a personal injury. To establish a claim for damages for personal injury you need to prove negligence.

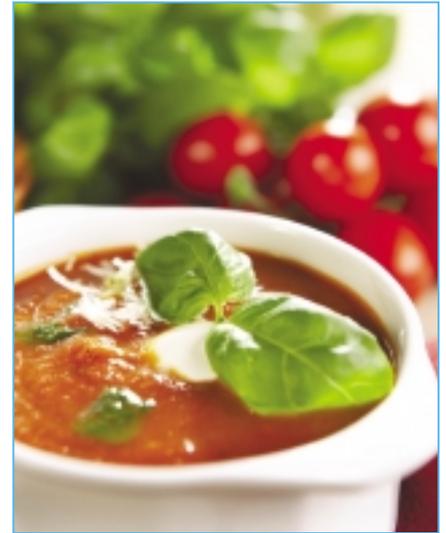
Negligence has three elements. You are owed a duty of care by the suppliers of food and restaurateurs that it is safe to eat. The supplier or restaurateur is potentially in breach of that duty if you suffer illness and the breach has caused loss, such as illness, which is reasonably foreseeable. A good example of a situation

giving rise to a claim is for a restaurateur, who owes you a duty of care, to serve you undercooked chicken. In this situation it should be reasonably foreseeable to the restaurateur that you could become ill.

Compensation can range upwards from £1,000 for a few weeks pain and suffering to thousands of pounds for more serious cases. Additional claims can be made for lost earnings, medication and care costs.

You should report your incidence of food poisoning to the Environmental Health Officer who will investigate, and take advice from your solicitor. As with every personal injury claim you must present it within three years of the date that you suffered the injury or within three years of the date that you realised that you had suffered injury, if that is later.

For further advice contact our personal injury team on 01246 231 288.



Recent employment law changes - Are you up to date ?



A number of legislative changes came into effect in April 2009 and business owners are advised to update their employment policies and practices to take these into account.

Take a moment to review our checklist to see if you are up to date.

- The statutory annual holiday entitlement increased from 4.8 weeks to 5.6 weeks.
- The right to request flexible working now applies to parents of children up to the age of 16.
- The statutory dispute resolution procedures have been repealed in their entirety and a new Acas Code governs employment relationships around discipline, dismissal and grievances. The TUPE rules around this change accordingly.
- A new method of calculating arrears of National Minimum Wage (NMW) has been introduced. Changes in the way NMW criminal offences are tried and the enforcement powers of NMW compliance officers have all been changed and strengthened for a more draconian new regime.
- New disclosure requirements in relation to directors' remuneration now apply.
- There have been a number of changes to tribunal rules and proceedings including the ability of a judge to sit alone to hear claims around payment for annual leave.
- Employers who do not pay tribunal awards will be listed in the Register of Judgments, Orders and Fines, which can be searched by the public and credit reference agencies.
- The new weekly rate of Statutory Sick Pay increases from £75.40 to £79.15.
- The prescribed weekly rate of statutory pay increased for maternity, paternity and adoption increases from £117.18 to £123.06.

If you need to amend any of your policies and procedures in light of these changes, then we would be delighted to assist.

Holidays with children after a relationship breaks down

As the weather improves and the shops encourage us to stock up on suntan cream and beach towels, our minds turn to the annual summer holiday and a break from our daily routine. If one of the reasons you need a good holiday is to help you recover from a relationship breakdown, you will need to consider the impact that these life changes are going to have on your plans, particularly if you are hoping to holiday with a child of the family. It is possible that this child will now be taken on two family summer holidays rather than one.

Most parents will have parental responsibility for their child. You should check with your solicitor that you do have this, as it ensures that you have a say over many aspects of your child's welfare.

If there are two people with parental responsibility for a child then both people have to agree to that child being taken abroad, provided that the court has not issued a "residence order". If one parent takes the child abroad without that agreement, they have committed a criminal act of abduction, regardless of whether or not they are the main carer for the child.

How the summer holidays are dealt with can be an emotive issue for both parents keen to spend time with their child. If possible, sit down together and decide how the time is going to be divided. You should take this opportunity to obtain the other parent's agreement to your chosen holiday destination. You will need to agree on a handover schedule for passports and for EHIC cards, which may entitle your child to receive free medical treatment whilst on

holiday, depending on your destination. Discuss when details of travel times and accommodation need to be provided. You should also agree how the child can contact the other parent, to avoid any difficulties during the holiday.

If contact arrangements with your child have been an issue during the relationship breakdown, you need to have these discussions well in advance of your proposed departure date. This will ensure that if you are unable to obtain the consent that you need, or if you have concerns about the other parent's holiday plans which you are unable to resolve between you, you can seek legal advice in good time.

Our family team will be able to advise you on how best to achieve the outcome that you want, whether that is an enjoyable holiday with your child, or confidence that you have the information you need about the holiday on which your child has been booked.

Our family team can also advise regarding:

- Divorce and separation
- Children matters
- Property issues and maintenance
- Care proceedings
- Co-habitee disputes
- Adoption
- Domestic violence

For further information on any aspect of family or matrimonial law please contact Julie Skill in Chesterfield on 01246 231 288, Ruth Froggatt in Mansfield on 01624 655 666 or Libby Wood in Matlock on 01629 584 885.



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